



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 14]

नई दिल्ली, शनिवार, अप्रैल 8, 1989 / चैत्र 18, 1911

No. 14]

NEW DELHI, SATURDAY, APRIL 8, 1989 / CHAITRA 18, 1911

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)

PART II—Section 3—Sub-section (II)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

मंत्रिमंडल सचिवालय

नई दिल्ली, 21 फरवरी, 1989

का. घा. 635—केंद्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधि-
भोगियों की बेवखली) अधिनियम, 1971 (1971 का 40) की धारा
3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, नीचे की सारणी के स्तम्भ
(1) में वर्णित अधिकारियों को जो सरकार के राजपत्रित अधिकारी हैं
उक्त अधिनियम के प्रयोजनों के लिए संपदा अधिकारी नियुक्त करती है
और उक्त अधिकारी, उक्त सारणी के स्तम्भ (2) में विनिर्दिष्ट सरकारी
परिसरों के बाबत अपनी-अपनी अधिकारिता की स्थानीय सीमाओं के भीतर
उक्त अधिनियम के द्वारा या उसके अधीन संपदा अधिकारी को प्रदत्त
शक्तियों का प्रयोग और अधिरोपित कर्तव्यों का पालन करेंगे।

अधिकारी का पदनाम

सरकारी परिसरों के प्रबंध और
अधिकारिता की स्थानीय सीमाएं

(1)

(2)

- उपनिवेश (प्रशासन) मुख्यालय परिसर जो विशेष सीमा: दल, मुख्या-
विशेष सीमा वन, सुरक्षा महा-
निदेशालय, मंत्रिमंडल सचिवालय
पूर्वी खंड 5, रामकृष्ण पुरम,
नई दिल्ली।
लय सुरक्षा महानिदेशालय, मंत्रिमंडल
सचिवालय का अपना स्वयं का है
अथवा पट्टे पर है अथवा उसकी
ओर से अधिग्रहीत है तथा जो
प्रशासनिक दृष्टि से विशेष सीमा
दल मुख्यालय के नई दिल्ली में
प्रशासनिक नियंत्रणाधीन है।

(1)

(2)

- सेना नायक (कमाण्डेंट) स्थापना परिसर विशेष सीमा: दल, मुख्यालय
नं. 22, मार्फत 56 ए. पी. सुरक्षा महानिदेशालय मंत्रिमंडल सचि-
वालय का अपना स्वयं का है अथवा
पट्टे पर है अथवा उसकी ओर से
अधिग्रहीत (निमित्त) है तथा विशेष
सीमा: दल के समस्त सैक्टरों/यूनिटों
(सीमा: दल मुख्यालय के अलावा) में
अवस्थित है और इसी के प्रशासनिक
नियंत्रण में है।

[सं. 14 (27)/88 - ई. ए. II]

आर. के. गंगर, उप सचिव

CABINET SECRETARIAT

New Delhi, the 21st February, 1989

S.O 635:--In exercise of the powers conferred by
Section 3 of the Public Premises (Eviction of unauthorised
occupants) Act, 1971 (40 of 1971), the Central Government
hereby appoint the officers mentioned in Column (1) of the
Table below, being Gazetted Officers of Government to be
estate Officer for the purposes of the said Act, and the said
Officers shall exercise the powers conferred and perform
the duties imposed on the estate officer by or under the said
Act, within the local limits of their jurisdictions in respect

of the Public Premises specified in Column (2) of the said Table:—

TABLE

Designation of the Officer	Categories of Public Premises and local limits and jurisdiction
1	2
Deputy Director (Administration) Headquarters, Special Frontier Force, Directorate General of Security, Cabinet of Secretariat, East Block V, Level IV, R.K. Puram, New Delhi-110056.	Premises at New Delhi belonging to or taken on lease or requisitioned by or on behalf of the Headquarters, Special Frontier Force, Directorate General of Security, Cabinet Secretariat under the administrative control of Headquarters Special Frontier Force at New Delhi.
2. Commandant, HQ Estt No 22, C/o 55 APO.	Premises other than at New Delhi belonging to or taken on lease or requisitioned by or on behalf of the Headquarter Special Frontier Force, Directorate General of Security, Cabinet Secretariat, at all Sectors/Units of the Special Frontier Force.
[No.14(27)/88—EA-II R.K. GANGAR, Dy. Secy.]	

विधि एवं न्याय मंत्रालय

(विधि कार्य विभाग)

सूचना

नई दिल्ली, 20 फरवरी, 1989

का. आ. 636.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री प्रेम किशन, अधिवक्ता ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उन्हें रेखाई व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का प्रारोप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में भेजे जायेगा।

[सं. का. 5 (16)/89-न्या.]

कृष्ण दत्त सिंह, सक्षम प्राधिकारी

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

NOTICE

New Delhi, the 20th February, 1989

S.O. 636.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Prem Kishan, Advocate for appointment as a Notary to practise in Rewari.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(16)/89-Judl.]

K. D. SINGH, Competent Authority

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 28 फरवरी, 1989

का. आ. 637.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार भारतीय रिजर्व बैंक की सिफारिशों पर घोषणा करती है कि उक्त अधिनियम के खंड II के उप खंड (1) के उप-बन्ध सीतामढ़ी सेन्ट्रल को-ऑपरेटिव बैंक लिमिटेड, सीतामढ़ी (बिहार राज्य) पर सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तिथि से 31 दिसम्बर, 1989 तक लागू नहीं होंगे।

[एफ. सं. 6-2/89 - ए. सी.]

पी. के. तेजयान, अवर सचिव

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 28th February, 1989

S.O. 637.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendations of the Reserve Bank of India declares that the provisions of sub-section (1) of Section 11 of the said Act shall not apply to the Sitamarhi Central Cooperative Bank Ltd., Sitamarhi (Bihar State) from the date of publication of this notification in the Official Gazette to 31st December, 1989.

[F. No. 6-2/89-AC]

P. K. TEJYAN, Under Secy.

वाणिज्य मंत्रालय

नई दिल्ली, 23 फरवरी, 1989

(रबर नियंत्रण)

का. आ. 638.—सर्वसाधारण की जानकारी के लिए यह प्रकाशित किया जाता है कि केन्द्रीय सरकार ने रबर अधिनियम, 1947 (1947 का 24) की धारा 6क की उपधारा (2) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए श्री के. एस. वर्मा, भूतपूर्व वित्तीय मन्त्रालय रबर बोर्ड, कोर्टादाम की 2 दिसम्बर, 1988 के पूर्वहित से सचिव, रबर बोर्ड, कोर्टादाम के रूप में नियुक्त किया है।

[का. सं. 17/6/87-प्लॉट (बी)]

सी. ए. भास्करन, अवर सचिव

MINISTRY OF COMMERCE

New Delhi, the 23rd February, 1989

(Rubber Control)

S.O. 638.—It is hereby published for the information of public that in exercise of the powers conferred by sub-section (2) of section 6A of the Rubber Act, 1947 (24 of

1947), the Central Government have appointed Shri K. S. Varma, formerly Financial Adviser in the Rubber Board, Kottayam, as Secretary, Rubber Board, Kottayam, with effect from the forenoon of the 2nd December, 1988.

[File No. 17/6/87-Plant (B)]
C. A. BHASKARAN. Under Secy.

(मुख्य निबंधक, आयात-निर्यात का कार्यालय)

आदेश

नई दिल्ली 10 फरवरी, 1989

का. आ. 639.—मैसर्स स्पाई कैपेज/एन के के/टोयो कन्सोर्टियम, 5-बी जंगपुरा, मेन मथुरा रोड, नई दिल्ली - 110014 को पूंजीगत माल के आयात के लिए केवल 32,32,200/- रुपये (261,000 यू. एन. डालर) मूल्य के लिए एक सीमा शुल्क निकासी परमिट सं. पी/जे/2097459 दिनांक 23-10-86 इस शर्त पर दिया गया था कि फर्म माल के भारत में आयात होने की तारीख से दो वर्षों के भीतर आयातित माल को मूल देश को पुनः निर्यात करेगी। फर्म ने उपर्युक्त सीमा शुल्क निकासी परमिट की अनुरूप प्रति के लिए इस आधार पर आवेदन किया है कि मूल प्रति खो गयी या अस्थानस्थ हो गयी है। आगे यह भी कहा गया है कि सीमा शुल्क निकासी परमिट एयर कार्गो (कस्टम हाउस) नई दिल्ली के पास पंजीकृत करवाया गया है और उसका पूर्ण रूप से उपयोग कर लिया गया है।

2 अपने तर्कों के समर्थन में लाइसेंसधारी ने नोटरी पब्लिक, दिल्ली के सामने विधिवत शपथ लेकर स्टाम्पड पेपर पर शपथ पत्र वांछित किया है। तदनुसार मैं संतुष्ट हूँ कि मूल सीमा शुल्क निकासी परमिट संख्या पी/जे/2097459, दिनांक 23-10-86 फर्म द्वारा खो गया या अस्थानस्थ हो गया है। यथा संशोधित आयात (नियंत्रण) आदेश, 1955 दिनांक 7-12-1955 की उपधारा 9 (ग) द्वारा प्रदत्त अधिकारी का प्रयोग करते हुए मैसर्स स्पाई-कैपेज/एन के के/टोयो कन्सोर्टियम, नई दिल्ली को जारी किए गई उक्त सीमा शुल्क निकासी परमिट सं. पी/जे/2097459 दिनांक 23-10-1986 को एनबू द्वारा रद्द किया जाता है।

3. सीमा शुल्क निकासी परमिट की अनुरूप प्रति पार्टी को अलग से जारी की जा रही है।

[स. सी जी III-1063/6/86-87]

पाल बंक, उव मुख्य निबंधक, आयात-निर्यात

(Office of the Chief Controller of Imports and Exports)

ORDER

New Delhi, the 10th February, 1989

S.O. 639.—M/s. Spie-Capag/NKK/Toyo Consortium, 5-B, Jangpura, Main Mathura Road, New Delhi-110014 were granted Custom Clearance Permit No. P/J/2097459 dated 23-10-1986 for Rs. 32,32,200 only (US \$ 261,000) for import of capital goods with the condition that the firm shall re-export the goods to the country of origin within a period of two years from the date of its import in India. The firm has applied for issue of Duplicate copy of Customs Clearance Permit mentioned above on the ground that the original has been lost or misplaced. It has been further stated that the CCP has been registered with Air Cargo (Custom House), New Delhi and utilised fully. The Custom Clearance Permit is required only for the purpose of Re-export of the Computer System.

2. In support of their contention, the licensee has filed an affidavit stamped paper duly sworn in before a Notary Public at Delhi, I am accordingly satisfied that the Original Custom Clearance Permit No. P/J/2097459 dt. 23-10-86 has been lost or misplaced by the firm. In exercise of the powers conferred under Sub-clause 9(cc) of the Import

(Control) Order, 1955 dated 7-12-55 as amended the said Custom Clearance Permit No. P/J/2097459 dt. 23-10-86 issued to M/s. Spie-Capag NKK/Toyo Consortium, New Delhi is hereby cancelled.

3. Duplicate copy of Custom Clearance Permit is being issued to the party separately.

[No. CG. III/1063/6/86-87]

PAUL BECK, Dy. Chief Controller
of Imports and Exports

विदेश मंत्रालय

नई दिल्ली, 15 फरवरी, 1989

का. आ. 640—मूल नियमावली, के नियम 45 के प्रावधानों के अनुसरण में राष्ट्रपति, इसके द्वारा होस्टल आवास को आबंटन (विदेश मंत्रालय) नियमावली, 1978 में और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, यथा :—

1. (1) ये नियम होस्टल आवास आबंटन (विदेश मंत्रालय) संशोधन नियम, 1989 कहलायेंगे।

(2) ये राजपत्र में प्रकाशन की तारीख को लागू हो जाएंगे।

2. होस्टल आवास (विदेश मंत्रालय) आबंटन नियम, 1978 में

1. नियम 2 में खंड (ग) के स्थान पर निम्नलिखित प्रतिस्थापित किया जाएगा तथा (ग) होस्टल से अभिप्राय है यथा स्थिति कस्तूरबा गांधी मार्ग नई दिल्ली विदेश मंत्रालय होस्टल अथवा गोल मार्केट, नई दिल्ली में विदेश मंत्रालय होस्टल."

(ii) नियम 4 में, उप नियम (2) के शीर्षक में, "स्नानगृह" और "रमोईश्वर" शब्दों के बाद "कस्तूरबा गांधी मार्ग में होस्टल में या गोल मार्केट होस्टल में मिगल सुट" शब्द जोड़ दिए जाएं,

(iii) नियम 6 में—

(क) उपनियम (1) के स्थान पर निम्नलिखित उपनियम प्रतिस्थापित कर दिया जाए, यथा :—

"(1) वह अधि अनुसूची 1 में बतायी जाएगी जिसके लिए अधिकारी अलग अलग दरों से लाइसेंस फीस और सेवा प्रभार का भुगतान करके होस्टल में रह सकना है,

(1-क) निम्ने ज्ञात वाली लाइसेंस फीस होस्टल के लिए वही होगी जो अनुसूची-II में (ii) कस्तूरबा गांधी मार्ग में बताई गई है,

(ii) गोल मार्केट में होस्टल के लिए फीस वही होगी जो अनुसूची-III में बतायी गई है।"

(ख) उपनियम (3) में—

(1) "मुख्यालय के लिए स्थानान्तरण होने पर होस्टल आवास के लिए आवेदन करने वाले अधिकारी से बाजार दरों पर लाइसेंस फीस ली जाएगी" शब्दों के स्थान पर "मुख्यालय के लिए स्थानान्तरण होने पर अधिकारी को होस्टल आवास का आबंटन रद्द समझा जाएगा और सरकार द्वारा समय-समय पर निर्धारित दरों पर अति तथा विभागीय प्रभारों सहित सेवा, प्रभार लिए जाएंगे" शब्द प्रतिस्थापित कर दिए जाएं,

(2) खंड (ग) को निकाल दिया जाए,

(ग) उपनियम (3) के बाद, निम्नलिखित उपनियम जोड़ा जाए, यथा :—

(4) नियम 8 में —

“(4) यदि किसी अधिकारी या उसकी पत्नी, जैसा भी मामला हो, उसका पति या उसकी आश्रित बच्चे का दिल्ली में या दिल्ली के आस-पास अपना मकान है तो लाइसेंस फीस और सेवा प्रभारों का उसकी देयता नीचे लिखे अनुसार होगी :—

(क) उपनियम (1) के स्थान पर निम्नलिखित उप नियम प्रतिस्थापित कर दिया जाए, यथा :—

“(1) लाइसेंस फीस, सेवा प्रभार, फर्नीचर का किराया आदि के भुगतान के लिए देयता आइटम की प्रभावी तारीख से शुरू होगी”;

(ख) उपनियम (2) के स्थान पर निम्नलिखित उपनियम प्रतिस्थापित किया जाए, यथा :—

“(2) लाइसेंस फीस, सेवा प्रभार, फर्नीचर के किराये की दरें आदि वही होंगी जो अनुसूची II या अनुसूची III में बताई गई है जैसा भी मामला हो और ये दरें समय-समय पर संशोधित की जा सकती हैं।

अपने स्वामित्व वाले मकान के किराये की जाने वाली लाइसेंस फीस की दर की स्लेब

(क) यदि अपने स्वामित्व वाले मकान सामान्य लाइसेंस फीस और सामान्य से प्राप्त आय 3000 रु. प्रतिमाह से सेवा प्रभार अधिक न हो

(ख) यदि अपने स्वामित्व वाले मकान सामान्य लाइसेंस फीस का दुगुना और से प्राप्त आय 3000 रु. प्रतिमाह से सामान्य सेवा प्रभार। अधिक हो जाए परन्तु 5,000 रु. प्रतिमाह से अधिक न हो

(ग) यदि अपने स्वामित्व वाले मकान सामान्य लाइसेंस फीस का तिगुना से प्राप्त आय 5,000 रु. प्रति माह से और सामान्य सेवा प्रभार अधिक हो जाए।

(5) नियम 10 में “बाजार दर पर लाइसेंस फीस के भुगतान का जुमाना” शब्दों के स्थान पर “सरकार द्वारा समय-समय पर निर्धारित दरों पर नुकसान तथा विभागीय प्रभारों सहित सेवा प्रभारों का भुगतान” शब्द प्रतिस्थापित किए जाएंगे,

(6) नियम II के उपनियम (5) में “बाजार दरों” के स्थान पर “ऐसी अतिथि दरें जो अनुसूची II या अनुसूची तीन, जैसा भी मामला हो में बताए गए आवास के प्रकार के संबंध में बतायी गई हैं” शब्द प्रतिस्थापित किए जाएं।

(7) अनुसूची के स्थान पर निम्नलिखित अनुसूची रखी जाए, यथा—

अनुसूची

अधिकारियों की श्रेणी	लाइसेंस फीस और सेवा प्रभार का भुगतान करने पर आवास की अधिकतम अवधि	सामान्य दर की दुगुनी लाइसेंस फीस और सेवा प्रभारों का भुगतान करने पर आवास की अधिकतम अवधि	सामान्य दर की तिगुनी लाइसेंस फीस और सेवा प्रभारों का भुगतान करने पर आवास की अधिकतम अवधि
1	2	3	4
1. इगूटी पर दिल्ली आने वाले विदेश स्थित मिशनरों में कार्यरत भारतीय मिशन प्रमुख	कोई सीमा नहीं
2. मुख्यालय में प्रस्थायी या परामर्शी इगूटी पर अधिकारी	प्रस्थायी या परामर्शी इगूटी की अवधि के लिए
3. मंत्रालय के स्थायी प्रशासनिक निवेशप्राप्त छुटी पर रहने वाले मिशन प्रमुख तथा अन्य अधिकारी	4 महीने
4. सेवा नियुक्ति पर विदेशों में लौटने वाले अधिकारी	2 महीने निवर्तमान आयु की तारीख से 3 महीने के अन्दर	2. महीने केवल सचिव/अपर सचिव स्थापना प्रभाग के प्रभारी/संयुक्त सचिव के विशिष्ट अनुमोदन से।	अन्य जो महीने सचिव/अपर सचिव स्थापना प्रभाग के प्रभारी/संयुक्त सचिव के अनुमोदन से।
5. मुख्यालय के लिए स्थापना पर विदेशों से लौटने वाले अधिकारी इस बात का ध्यान किए बिना कि अर्थटन परिवार के या अधिकारी के स्वयं के प्रयोग के लिए किया गया है।	6 महीने	सचिव/अपर सचिव/स्थापना प्रभाग के प्रभारी संयुक्त सचिव के अनुमोदन में 6 महीने	अन्य छ. महीने मंत्रालय के सचिव/अपर सचिव स्थापना प्रभाग के संयुक्त सचिव के विशिष्ट अनुमोदन से कोई कोई नहीं।
6. मुख्यालय से विदेश स्थित मिशन के लिए स्थापना पर जाने वाले अधिकारी	1 महीना	कोई नहीं	कोई नहीं

1	2	3	4
7. विदेश स्थित मिशन में कार्यरत प्रतिहारियों को गृह अथवा परराष्ट्र वाली पत्नी और बच्चे (रमोई सहित या बिना रमोई के एक कमरा)	2 महीने	कोई नहीं	कोई नहीं
8. भारतीय विदेश सेवा "क" के परि-बोधाधी	दिल्ली में प्रशिक्षण की अवधि के दौरान और कोई उसके बाद यदि उन्हें उसके तत्काल बाद मुख्यालय में तैनात किया जाता है।		कोई नहीं

अनुसूची II

कप्तूरबा गोगी मार्ग, नई दिल्ली में विदेश मंत्रालय होस्टल में विभिन्न प्रकार के आवास की किस्मों के लिए लाइसेंस फीस की दरें।

आवास की किस्म	फर्नीचर का किराया						
	कमरे की लाइसेंसफीस	स्टेड्ड		सादा		सेवा प्रकार	
		डी सी के बिना	डी सी सहित	डी सी के बिना	डी सी सहित	डी सी के बिना	डी सी सहित
1	2	3	4	5	6	7	8
1. बिना रमोई के सिंगल रुम	65 रु.	19.30 रु.	23 रु.	10.50 रु.	12.50 रु.	365 रु.	436 रु.
2. रमोई सहित सिंगल रुम	90 रु.	28.29 रु.	33.75 रु.	17.60 रु.	21 रु.	445 रु.	531 रु.
3. फेमली सुट	125 रु.	60.00 रु.	72.70 रु.	40.04 रु.	47.75 रु.	866 रु.	1033 रु.
दैनिक दरें							
1. बिना रमोई के सिंगल रुम	जैसा समय-समय पर सरकार द्वारा निर्धारित किया जाए।						
2. रमोई सहित सिंगल रुम							
3. फेमली सुट							
प्रतिधि के लिए दरें							
1. बिना रमोई के सिंगल रुम	जैसा समय-समय पर सरकार द्वारा निर्धारित किया जाए।						
2. रमोई सहित सिंगल रुम							
3. फेमली सुट							

अनुसूची III

गोग मार्केट, नई दिल्ली में विदेश मंत्रालय के होस्टल में विभिन्न प्रकार की आवास के लिए लाइसेंस फीस की दरें

आवास की किस्म	फर्नीचर का किराया						
	कमरे की लाइसेंस फीस	स्टेड्ड		सादा		सेवा प्रकार	
		डी सी के बिना	डी सी के सहित	डी. सी. के बिना	डी.सी. सहित	डी सी के बिना	डी सी सहित
1	2	3	4	5	6	7	8
1. सिंगल सुट	90 रु.					521 रु.	621 रु.
2. डबल सुट	125 रु.					655 रु.	781 रु.
दैनिक दरें :-		जैसा समय-समय पर सरकार द्वारा निर्धारित करे					
1. सिंगल सुट							
2. डबल सुट							
प्रतिधि के लिए दरें		जैसा समय-समय पर सरकार द्वारा निर्धारित करे					
1. सिंगल सुट							
2. डबल सुट							

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 15th February, 1989

S.O. 640.—In pursuance of the provisions of rule 45 of the Fundamental Rules, the President hereby makes the following rules further to amend the Allotment of Hostel Accommodation (Ministry of External Affairs) Rules, 1978, namely:—

1. (1) These rules may be called the Allotment of Hostel Accommodation (Ministry of External Affairs) Amendment Rules, 1989.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the Allotment of Hostel Accommodation (Ministry of External Affairs) Rules, 1978.

(i) In rule 2, for clause (h), the following clause shall be substituted, namely :—

“(h) ‘Hostel’ means the External Affairs Hostel at Kasturba Gandhi Marg, New Delhi or, as the case may be, the External Affairs Hostel at Gole Market, New Delhi;”

(ii) In rule 4, in the heading to sub-rule (2), after the words “bath and kitchen” the words in the Hostel at Kasturba Gandhi Marg or single suite in the Hostel at Gole Market” shall be inserted;

(iii) In rule 6, (a) for sub-rule (1), the following sub-rules shall be substituted, namely :—

Slab of rent from the owned house

- (a) If the income from own house does not exceed Rs. 3,000 p.m.
(b) If the income from own house exceeds Rs. 3,000/- p.m. but does not exceed Rs. 5,000/- p.m.
(c) If the income from own house exceeds Rs. 5,000/- p.m.
(iv) In rule 8, -

(a) for sub-rule (1), the following sub-rule shall be substituted, namely :

“(1) The liability for payment of licence fee, service charges, furniture rent etc., shall commence from the effective date of allotment.

(b) For sub-rule (2), the following sub-rule shall be substituted, namely :—

“(2) The rates of licence-fee, service charges, furniture rent, etc., are as specified in Schedule II or as the case may be Schedule III and these rates may be revised from time to time.”;

(v) In rule 10, for words “the penalty of payment of licence fee at market rate”, the words “payment of damages at the rate prescribed by the Government from time to

“(1) The period for which an officer may stay in the Hostel, on payment of licence fee and service charges at different rates, shall be specified in Schedule I.

(1-A) The rates of licence fee and service charges chargeable,

(i) For the Hostel at Kasturba Gandhi Marg shall be as specified in Schedule-II;

(ii) For the Hostel at Gole Market shall be as specified in Schedule-III.”;

(b) In sub-rule (3), (1) for the words “an officer applying for Hostel accommodation on transfer to Headquarters, shall be charged licence fee at market rates”, the words “allotment of Hostel accommodation to an officer on transfer to Headquarters shall be deemed to be cancelled and damages at the rates prescribed by the Government from time to time as well as service charges with departmental charges shall be charged” shall be substituted;

(2) clause (c) shall be omitted;

(c) after sub-rule (3), the following sub-rule shall be inserted, namely :—

“(4) In case an officer or his wife or, as the case may be, her husband or his or her dependent child owns a house at or near Delhi, his or her liability for licence fee and service charges shall be as follows :—

Rate of licence fee to be charged

- Normal licence fee and normal service charges.
Twice the normal licence fee and normal service charges.
Thrice the normal licence fee and normal service charges

time as well as service charges with departmental charges” shall be substituted;

(vi) In rule 11, in sub-rule (5), for words “market rates”, the words “such Guest rates as may be specified in relation to type of accommodation mentioned in Schedule II as the case may be, Schedule III shall be substituted.

(vii) For the Schedule, the following Schedule shall be substituted namely :—

SCHEDULE I

Category of Officers	Maximum stay on payment of licence fee and service charges	Maximum stay on payment of licence fee at double the normal rate and service charges	Maximum stay on payment of licence fee at three times the normal rate and service charges
(1)	(2)	(3)	(4)
1. Serving Indian Heads of Missions visiting Delhi on duty	No limit	—	—
2. Officers on temporary or consultation duty at Headquarters	For the period of temporary or consultation duty	—	—

(1)	(2)	(3)	(4)
3. Heads of Missions as well as any other officer on leave under permanent administrative control of the Ministry	4 months	-	-
4. Officers returning from abroad on superannuation	2 months (within 3 months from the date of superannuation).	2 months (only with specific approval of Secy./Addl. Secy./Joint Secy. in charge of Estt. Division.	Another 2 months (with the approval of Secy./Addl. Secy./Jt. Secy. in charge of Estt. Division.
5. Officers returning from abroad on transfer to Hqrs. (regardless of whether allotment is made for the use of family or of the officer himself).	6 months	6 months with the approval of Secy./Addl. Secy./Jt. Secy. in charge of Estt. Div.	Another 6 months with the specific approval of Secy./Addl. Secy./Jt. Secy. in charge of Estt. Division in the Ministry.
6. Officer on transfer from Hqrs. to a Mission abroad.	1 month	Nil	Nil
7. Wife and children of an officer serving in Missions abroad on home leave (only single rooms with or without kitchen).	2 months	Nil	Nil
8. Indian Foreign Service 'A' Probationers.	During the period of training in Delhi and subsequently if, they are immediately thereafter posted at Hqrs.	Nil	Nil

SCHEDULE II

Rates for Licence fee for different types of Accommodation in the External Affairs Hostel, K.G. Marg New Delhi

Type of accommodation	Furniture rent						
	Room licence fee	Standard		Austere		Service charges	
		Without DC	With DC	Without DC	With DC	Without DC	With DC
		(3)	(4)	(5)	(6)	(7)	(8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
1. Single room without kitchenette	65.00	19.30	23.00	10.50	12.50	361.00	436.00
2. Single room with kitchen	90.00	28.29	33.75	17.60	21.00	441.00	531.00
3. Family suite	125.00	60.97	72.70	40.04	57.75	866.00	1033.00

DAILY RATES

1. Single room without kitchenette	}	As may be specified by Government from time to time
2. Single room with kitchen		
3. Family suite		
GUEST RATES		
1. Single room without kitchenette	}	
2. Single room with kitchen		
3. Family suite		

SCHEDULE III

Rates for Licence Fee for Different Types of Accommodation in the Ministry of External Affairs Hostel, Gole Market, New Delhi

Type of accommodation	Room licence Fee	Furniture Rent					
		Standard		Austere		Service Charges	
		Without DC	With DC	Without DC	With DC	Without DC	With DC
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Rs.					Rs.	Rs.
1. Single suite	90.00					521.00	621.00
2. Double suite	125.00					655.00	781.00
DAILY RATES							
1. Single suite							
2. Double suite							
GUEST RATES							
1. Single suite							
2. Double suite							

As may be specified by Government from time to time.

[No. Q/SEI/8601/45/84-Vol.II]

G.S. IYER, Jt. Secy.

उद्योग मंत्रालय

(कम्पनी कार्य विभाग)

नई दिल्ली, 21 फरवरी, 1989

का. प्रा. 641 :—एकाधिकार तथा अवरोधक व्यापारिक व्यवहार अधिनियम, 1969 (1969 का 54) की धारा 26 की उपधारा (3) के अनुसरण में केन्द्रीय सरकार एतद्वारा रिशरा स्टील्स लिमिटेड, जिसका पंजीकृत कार्यालय बटर्जी इण्टरनेशनल सेन्टर, 17 वीं मंजिल, फ्लैट नं. 1, 33 ए, चौरंगी रोड, कलकत्ता-700071 में है, के पंजीकरण के निरस्तीकरण को अधिसूचित करती है, क्योंकि उक्त उपक्रम ऐसे उपक्रमों में से है जिन पर उक्त अधिनियम के भाग-क के अध्याय-3 के उपबन्ध प्रबल लागू नहीं होते हैं (पंजीकरण संख्या 2384/85)

[सं. 16/9/89-एम.-3]

MINISTRY OF INDUSTRY

(Department of Company Affairs)

New Delhi the 21st February, 1989

S.O. 641.—In pursuance of Sub-section (3) of Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) the Central Government hereby notifies the cancellation of the registration of M/s. Rishra Steels Limited having its registered Office at Chatterjee International Centre, 17th Floor, Flat No. 1, 33A, Chowringhee Road, Calcutta-700071 the said undertaking being undertaking to which the provisions of part A Chapter III of the said Act no longer apply.

(Registration No. 2384/85).

[No. 16/9/89-M. III]

का. प्रा. 642 :—एकाधिकार तथा अवरोधक व्यापारिक व्यवहार अधिनियम, 1969 (1969 का 54) की धारा 26 की उपधारा (3) के अनुसरण में केन्द्रीय सरकार एतद्वारा पाली ग्रोवर वुल्लेन्स प्रा. लिमिटेड, जिसका पंजीकृत कार्यालय 17, उषा किरन, एम. एल. धानुकर मार्ग, बम्बई-400026 में है, के पंजीकरण को

निरस्तीकरण को अधिसूचित करती है, क्योंकि उक्त उपक्रम ऐसे उपक्रमों में से है जिन पर उक्त अधिनियम के भाग "क" अध्याय-III के उपबन्ध प्रबल लागू नहीं होते हैं। (पंजीकरण संख्या 1954/84)।

[सं. 16/9/89-एम.-3]

शशिभूषण सिंह, उप सचिव

S.O. 642.—In pursuance of Sub-section (3) of Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Central Government hereby notifies the cancellation of the registration of M/s. Pali Grover Woollens Pvt. Ltd. having its registered Office at 17, Usha Kiran, M.L. Dhanukar Marg, Bombay-400026 the said undertaking being undertaking to which the provisions of Part A Chapter III of the said Act no longer apply.

(Registration No. 1954/84).

[No. 16/9/89-M. III]

S. B. SINGH, Dy. Secy.

(औद्योगिक विकास विभाग)

विकास आयुक्त (लघु उद्योग) का कार्यालय

नई दिल्ली, 20 फरवरी, 1989

का. प्रा. 643 :—केन्द्रीय सरकार, राजभाषा (मंच के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में विकास आयुक्त (लघु उद्योग) के अधीन लिखित कार्यालय, जिसके 80 से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

लघु उद्योग सेवा संस्थान

औद्योगिक प्रशिक्षण

पटना-800013

[संख्या 6(1) 99-हिन्दी]

मदन गुप्त, निदेशक

OFFICE OF THE DEVELOPMENT COMMISSIONER
(Department of Industrial Development)
(Small Scale Industries)

New Delhi, the 20th February, 1989

Development Commissioner (Small Scale Industries), where
more than 80 per cent staff have acquired working knowledge
of Hindi.

Small Industries Service Institute,
Industrial Estate,
Patna-800013

S.O. 643.—In pursuance of sub-rule (4) of rule 10 of the
Official Language (and for official purposes of the Union), Rules
1976, the Central Government hereby notifies the following
office under the administrative control of the Office of the

[No. 6(1)/89-Hindi]
M. L. GUPTA, Director

बाद्य एवं नागरिक पूर्ति मंत्रालय


(नागरिक पूर्ति विभाग)

नई दिल्ली, 15 फरवरी, 1989

का. भा. 644.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उपनियम (1) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस मानक मुहर का डिजाइन, उसके शाब्दिक विवरण और संबद्ध भारतीय मानक की संख्या और वर्ष सहित नीचे अनुसूची में दिया गया है, वह निर्धारित कर दिया गया है।

भारतीय मानक ब्यूरो अधिनियम, 1986 और उसके अधीन बने नियमों तथा विनियमों के प्रयोजन के लिए यह मानक मुहर 1987-12-01 से लागू होगी

अनुसूची

क्र.सं.	मानक मुहर का डिजाइन	उत्पाद/उत्पाद श्रेणी	संबद्ध भारतीय मानक की संख्या और वर्ष	मानक मुहर के डिजाइन का शाब्दिक विवरण
(1)	(2)	(3)	(4)	(5)
1.		ऑफसेट बर्नर टाइप के दो लिटर अभिविहित घारिता वाले तेल दाब स्टोव पदनाम सं. 1 और 2 के आवाज करने वाले बर्नरों वाले	ISI: 10109-1981	स्तम्भ (2) में दिखाई गई निश्चित शैली और परस्पर संबद्ध अनुपात में बनाया गया "ISI" अक्षरयुक्त भारतीय मानक ब्यूरो का मोनोग्राम, जिसमें भारतीय मानक की संख्या डिजाइन में दिखाए अनुसार मोनो ग्राम के ऊपर अंकित है।

[संख्या सी एम सी/13: 9]

MINISTRY OF FOOD AND CIVIL SUPPLIES


(BUREAU OF INDIAN STANDARDS)

New Delhi, the 15th February, 1989

S.O. 644 :—In pursuance of sub-rule (1) of the rule 9 of Bureau of Indian Standards Rules, 1987 the Bureau of Indian Standards, hereby, notified that the Standard Mark, design of which together with the description of the design(s) and the number and year of the relevant Indian Standard(s) given in the Schedule hereto annexed, has been specified.

This Standard Mark for the purpose of the Bureau of Indian Standards Act, 1986 and the Rules and Regulations framed thereunder, shall come into force with effect from 1987-12-01;

SCHEDULE


Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and year of the Relevant Indian Standard	Description of the design of the Standard Mark
(1)	(2)	(3)	(4)	(5)
1.		Oil pressure stoves, offset burner type, 2 litre nominal capacity with roaster type burners of designation Nos. 1 and 2.	IS : 10109-1981	The monogram of the Bureau of Indian Standards, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in col. (2); the number of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.

[No. CMB/13:9]

का. भा. 645.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उपनियम (1) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस मानक मुहर का डिजाइन, उसके शाब्दिक विवरण और संबंध भारतीय मानक की संख्या और वर्ष सहित नीचे अनुसूची में दिया गया है, वह निर्धारित कर दिया गया है।

भारतीय मानक ब्यूरो अधिनियम, 1986 और उसके अधीन बने नियमों तथा विनियमों के प्रयोजन के लिए यह मानक मुहर 88-02-16 से लागू होगी

अनुसूची


क्र.सं.	मानक मुहर का डिजाइन	उत्पाद/उत्पाद श्रेणी	संबंध भारतीय मानक मानक मुहर के डिजाइन का शाब्दिक विवरण की संख्या और वर्ष
(1)	(2)	(3)	(4)
1.		वस्त्रादि उद्योग में प्रयुक्त अल्ट्रासायनिक नील रंग	IS : 11217—1984 स्तम्भ (2) में दिखाई गई निश्चित शैली और परस्पर संबंध अनुपात में बनाया गया "ISI" प्रक्षरयुक्त भारतीय मानक ब्यूरो का मोनोग्राम, जिसमें भारतीय मानक की संख्या डिजाइन में दिखाए गए मोनोग्राम के ऊपर अंकित हो।

[संख्या सीएमडी/13:9]

S.O. 645: - In pursuance of sub-rule (1) of the rule 9 of Bureau of Indian Standards Rules, 1987 the Bureau of Indian Standards, hereby, notifies that the Standard Mark, design of which together with the description of the design and the number and year of the relevant Indian Standard is given in the Schedule hereto annexed, has been specified.

This Standard Mark for the purpose of the Bureau of Indian Standards Act, 1986 and the Rules and Regulations framed thereunder, shall come into force with effect from 1988-02-6;

SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No and year of the Relevant Indian Standard	Description of the design of the Standard Mark
(1)	(2)	(3)	(4)	(5)
1.		Ultramarine blue for use in textile industry	IS : 11217-1984	The monogram of the Bureau of Indian Standards, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in Col. (2); the number of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.

[No. CMD/13:9]

का. भा. 648.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो द्वारा अधिसूचित किया जाता है कि तेल दाब स्टोव की प्रति इकाई मुहर लगाने की फीस जिसका विवरण नीचे अनुसूची में दिया गया है, निर्धारित कर दी गई है और यह फीस 1987-12-01 से लागू होगी।

अनुसूची

क्र.सं.	उत्पाद/उत्पाद की श्रेणी	संबंध भारतीय मानक की संख्या और वर्ष	इकाई	प्रति इकाई मुहर लगाने की फीस
(1)	(2)	(3)	(4)	(5)
1.	प्रॉफ़सेट बर्नर टाइप के दो लिटर सांकेतिक धारिता वाले तेल दाब स्टोव, पदनाम संख्या 1 और 2 के आवाज करने वाले बर्नर युक्त	IS : 10109—1981	एक स्टोव	(1) 15 पैसे प्रति इकाई, पहली 50,000 इकाइयों के लिए, और (2) 10 पैसे प्रति इकाई, 50001वीं इकाई और उससे अधिक इकाइयों के लिए

[संख्या सी एम डी/13:10]

S.O. No. 646:—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification Regulations, 1988) the Bureau of Indian Standards, hereby, notifies that the marking fee per unit for Oil pressure stoves details of which are given in the Schedule hereto annexed, has been determined and the fee shall come into force with effect from 1987-12-01.

SCHEDULE

Sl. Product/Class of Product No.	No. and Year of Unit relevant Indian Standard	Marking fee per unit
(1)	(2)	(3)
1. Oil pressure stoves, offset burner type, 2 litre nominal capacity with roarer type burners of designation No. 1 and 2	IS : 10109-1981	One stove (i) 15 paise per unit for the first 50 000 units; and (ii) 10 paise per unit for the 50001st unit and above.

[No. CMD/13 : 10]

क्र. प्रा. 647.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो द्वारा अधिसूचित किया जाता है कि सोडियम बाईसल्फेट की प्रति इकाई मुहर लगाने की फीस जिसका विवरण नीचे अनुसूची में दिया गया है, निर्धारित कर दी गई है और यह फीस 1987-04-16 से लागू होगी।

अनुसूची

क्र.सं.	उत्पाद/उत्पादन की श्रेणी	संबंध भारतीय मानक की संख्या और वर्ष	इकाई	प्रति इकाई मुहर लगाने की फीस
(1)	(2)	(3)	(4)	(5)
1.	सोडियम बाईसल्फेट (सोडियम मेटाबाईसल्फेट) केवल तकनीकी ग्रेड	IS : 248—1978	एक टन	10.00 रु.

[संख्या सीएमडी/13 : 10]

S. O. No. 647 :—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby, notifies that the marking fee per unit for Sodium bisulphate details of which are given in the Schedule hereto annexed, has been determined and the fee shall come into force with effect from 1987-04-16;

SCHEDULE

Sl. Product/Class of Product No.	No. and Year of Relevant Indian Standard	Unit	Marking fee per unit
(1)	(2)	(3)	(4)
1. Sodium bisulphate (sodium metabisulphate) technical grade only	IS : 248-1978	One Tonne	Rs. 10.00

[No. CMD/13 : 10]

क्र. प्रा. 648.—भारतीय मानक ब्यूरो प्रमाणन विनियम, 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो द्वारा अधिसूचित किया जाता है कि बस्त्रादि उद्योग में प्रयुक्त अल्ट्रा मैरीन नीले रंग की प्रति इकाई मुहर लगाने की फीस, जिसका विवरण नीचे अनुसूची में दिया गया है, निर्धारित कर दी गई है और यह फीस 1988-02-16 से लागू होगी।

अनुसूची

क्र.सं.	उत्पाद/उत्पादन की श्रेणी	संबंध भारतीय मानक की संख्या और वर्ष	इकाई	प्रति इकाई मुहर लगाने की फीस
(1)	(2)	(3)	(4)	(5)
1.	बस्त्रादि उद्योग में प्रयुक्त अल्ट्रा-मैरीन नीले रंग	IS : 11217—1984	एक टन	(1) 20.00 रु. प्रति इकाई, पहली 400 इकाइयों के लिए, और (2) 10.00 रु. प्रति इकाई, 401वीं इकाई और उससे अधिक इकाइयों के लिए।

[संख्या सीएमडी/13 : 10]

S. O. No. 648 :- In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby, notifies that the marking fee per unit for Ultramarine blue for use in textile industry details of which are given in the Schedule hereto annexed, has been determined and the fee shall come into force with effect from 1988-02-16;

SCHEDULE

Sl. No.	Product/Class of Product	No. and Year of Relevant Indian Standard	Unit	Marking fee per unit
(1)	(2)	(3)	(4)	(5)
1.	Ultramarine blue for use in textile industry	IS : 11217-1984	One tonne	(i) Rs. 20.00 per unit for the first 400 units; and (ii) Rs. 10.00 per unit for the 401st unit and above.

[No. CMD/13 : 10]

क्र. आ. 649 - भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो द्वारा अधिसूचित किया जाता है कि डीजल इंजन जिसका विवरण नीचे अनुसूची में दिया गया है, की प्रति इकाई मुहर लगाने की फीस निर्धारित कर दी गई है और यह फीस 1987-01-01 से लागू होगी।

अनुसूची

क्र. सं.	उत्पाद/उत्पाद श्रेणी	संबद्ध भारतीय मानक की संख्या और वर्ष	इकाई	प्रति इकाई मुहर लगाने की फीस
(1)	(2)	(3)	(4)	(5)
1.	कृषि कार्य के लिए सतत गति के आईएम : 11170—1985 संपीड़न प्रज्ज्वलित (डीजल) इंजनों की कार्यकारिता अपेक्षाएं (20 कि. वा. तक) टिप्पणी— मुहरांकन फीस की दर दिनांक 1988-08-01 से निर्धारित अनुसार संशोधित कर दी गई हैं:		एक इंजन	(1) 8.00 रु. प्रति इकाई, पहली 1000 इकाइयों के लिए, (2) 5.00 रु. प्रति इकाई, 1001वीं इकाई और 6000 इकाइयों तक के लिए, (3) 2.00 रु. प्रति इकाई, 6001वीं इकाई और 11000 इकाइयों तक के लिए, (4) 1.00 रु. प्रति इकाई, 11001वीं इकाई और इससे अधिक इकाइयों के लिए
	(1) 10.00 रु. प्रति इकाई, पहली 1000 इकाइयों के लिए (2) 6.00 रु. प्रति इकाई, 1001वीं इकाई और 6000 इकाइयों तक के लिए, (3) 2.00 रु. प्रति इकाई 6001 वीं इकाई और इससे अधिक इकाइयों के लिए) (इकाई-एक इंजन)			

[संख्या सीएमडी/13 : 19]

S. O. No. 649 :- In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby, notifies that the marking fee per unit for diesel engine details of which are given in the Schedule hereto annexed, has been determined and the fee shall come into force with effect from 1987-02-01 :

THE SCHEDULE

Sl. No.	Product/Class of Product	No. and Year of Relevant Indian Standard	Unit	Marking fee per unit
(1)	(2)	(3)	(4)	(5)
1.	Performance requirements for constant speed compression ignition (diesel) engines for agricultural purposes (upto 20 kw)	IS : 11170-1985	One Engine	(i) Rs. 8.00 per unit for the first 1000 units; (ii) Rs. 5.00 per unit for the 1001st to 6000 units; (iii) Rs. 2.00 per unit for the 6001st to 11000 units ; and (iv) Rs. 1.00 per unit for the 11001st unit and above

Note: Rate of Marking Fee has since been revised with effect from 1988-08-01 as under;


- (i) Rs. 10.00 per unit for the 1st 1000 units;
(ii) Rs. 6.00 per unit for the 1001st to 6000 units and
(iii) Rs. 2.00 per unit for the 6001st unit and above.
(Unit--One Engine)

[No. CMD/13 : 10]

का. भा. 650—भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उपनियम (1) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस मानक मुहर का डिजाइन, उसके शाब्दिक विवरण और संबद्ध भारतीय मानक की संख्या और वर्ष सहित नीचे अनुसूची में दिया गया है, वह निर्धारित कर दिया गया है।

भारतीय मानक ब्यूरो अधिनियम 1986 और उसके अधीन बने नियमों तथा विनियमों के प्रयोजन के लिए यह मानक मुहर 1987-01-01 से लागू होगी।

अनुसूची


क्र.सं.	मानक मुहर का डिजाइन	उत्पाद/उत्पाद श्रेणी	संबद्ध भारतीय मानक मानक मुहर के डिजाइन का शाब्दिक विवरण की संख्या और वर्ष	
(1)	(2)	(3)	(4)	(5)
1.		कृषि प्रयोजनों के लिए सतत गति के संपीड़न बल (डीजल) इंजनों (20 कि. वा. तक) की कार्यकारिता अपेक्षाएं	IS: 11170—1985	स्मृति (2) में दिखाई गई निश्चित शैली और परस्पर संबद्ध अनुपात में बनाया गया "ISI" अक्षरयुक्त भारतीय मानक ब्यूरो का मोनोग्राम, जिसमें भारतीय मानक की संख्या डिजाइन में दिखाए अनुसार मोनोग्राम के ऊपर अंकित है।

[संख्या सीएमडी/13: 9]

S. O. 650: In pursuance of sub-rule (1) of the rule 9 of Bureau of Indian Standards Rules, 1987 the Bureau of Indian Standards, hereby, notifies that the Standards Mark designing of which together with the description of the design and the number and year of the relevant Indian Standards is given in the Schedule hereto annexed, has been specified.

This Standard Mark for the purpose of the Bureau of Indian Standards Act, 1966 and the Rules and Regulations framed thereunder, shall come into force with effect from 1987-01-01:


SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and year of the Relevant Indian Standard	Description of the design of the Standard Mark
(1)	(2)	(3)	(4)	(5)
1.		Performance requirements for constant speed compression ignition (diesel) engines for agricultural purposes (upto 20 kw)	IS : 11170-1985	The monogram of the Bureau of Indian Standards consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in Col. (2); the number of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.

[No. CMD/13 :9]

का. भा. 651—भारतीय मानक ब्यूरो नियम 1987 के नियम के उपनियम (2) के अनुसरण में एतद्वारा अधिसूचित किया जाता है कि भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), दिनांक 1972-10-21 में प्रकाशित तत्कालीन औद्योगिक विकास मंत्रालय (भारतीय मानक संस्था) की अधिसूचना संख्या का. भा. 3316, दिनांक 1972-9-25 का आंशिक संशोधन करते हुए तप्त वेल्डित इस्पात की प्लेट (6 मिमी. तक) चद्दर और पत्ती की मानक मुहर का डिजाइन संशोधित कर दिया गया है और मानक मुहर का संशोधित डिजाइन, जिसमें संबद्ध भारतीय मानक की संख्या और वर्ष तथा विवरण नीचे अनुसूची में दिए गए हैं, तुरन्त प्रभाव में लागू होता है।


अनुसूची

क्रम संख्या	मानक मुहर का डिजाइन	उत्पाद/उत्पाद श्रेणी	संबद्ध भारतीय मानक की संख्या और वर्ष	मानक मुहर के डिजाइन का शाब्दिक विवरण
(1)	(2)	(3)	(4)	(5)
1.		अल्प दाब गैस सिलिंडरों के निर्माण के लिए तप्त बेतलित इस्पात प्लेट (6 मिमी तक), बट्टर और पत्ती	आईएस : 6240—1976	स्तम्भ (2) में दिखाई गई निश्चित शैली और परस्पर संबद्ध अनुपात में बनाया गया "ISI" अक्षरयुक्त भारतीय मानक ब्यूरो का मोनोग्राम, जिसमें भारतीय मानक की संख्या डिजाइन में दिखाए अनुसार मोनोग्राम के ऊपर और संबद्ध ग्रेड का नाम मोनोग्राम के नीचे प्रकट हो।

[सं० सीएमडी/13:9]

S.O. 651.—In pursuance of Sub-rule (2) of Rule 9 of the Bureau of Indian Standards Rules, 1987 it is hereby notified that the partial modification of the then Ministry of Industrial Development (Indian Standards Institution) notification number S.O. 3316 dated 1972-09-25 published in the Gazette of India, Part-II, Section-3, Sub-section (ii) dated 1972-10-21 the design of the Standard Mark for hot rolled steel plate (upto 6mm), sheet and strip sheet has been revised and the revised design of the Standard Mark, together with the number and year of the relevant Indian Standard and description of the design as given in the following schedule shall come into force with immediate effect.

SCHEDULE


Sl. No.	Design of the Standard Mark	Product/Class of Product	No. & Year of the Relevant Indian Standard	Description of the Design of the Standard Mark
(1)	(2)	(3)	(4)	(5)
1.		Hot rolled steel plate (up to 6mm), and strip for the manufacture of low pressure gas cylinders	IS : 6240-1976	The monograms of the Bureau of Indian Standards consisting of letters 'ISI' drawn in the exact style and relative proportions as indicated in Col. (2); the number of the Indian Standard being superscribed on the top side and the relevant grade designation being subscribed under the bottom side of the monogram as indicated in the designs.

[No. GMD/13:9]

को. प्रा. 652.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उपनियम (1) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है जिस भारतीय मानक मुहर का डिजाइन, उसके शाब्दिक विवरण और संबद्ध भारतीय मानक के शीर्षक सहित नीचे अनुसूची में दिया गया है, वह निर्धारित कर दिया गया है।

भारतीय मानक ब्यूरो अधिनियम 1986 और उसके अधीन बने नियमों तथा विनियमों के प्रयोजन के लिए यह मानक मुहर 1987-04-16 से लागू होगी।

अनुसूची


क्र.सं.	मानक मुहर की डिजाइन	उत्पाद/उत्पाद श्रेणी	संबद्ध भारतीय मानक की संख्या और वर्ष	मानक मुहर के डिजाइन का शाब्दिक विवरण
(1)	(2)	(3)	(4)	(5)
1.		सोडियम बाई सल्फेट (सोडियम मेटाबाई सल्फेट), केवल तकनीकी ग्रेड	आईएस : 248-1978	स्तम्भ (2) में दिखाई गई निश्चित शैली और परस्पर संबद्ध अनुपात में बनाया गया "ISI" अक्षरयुक्त भारतीय मानक ब्यूरो का मोनोग्राम, जिसमें भारतीय मानक की संख्या डिजाइन में दिखाए अनुसार मोनोग्राम के ऊपर प्रकट हो।

[संख्या सीएमडी/13:9]

S.O. 652:—In pursuance of sub-rule (1) of the rule 9 of Bureau of Indian Standards Rules, 1987 the Bureau of Indian standards, hereby, notifies that the Standards Mark, design of which together with the description of the design and the number and year of the relevant Indian Standard is given in the Schedule hereto annexed, has been specified.

This Standard Mark for the purpose of the Bureau of Indian Standards Act, 1986 and the Rules and Regulations framed thereunder, shall come into force with effect from 1987-04-16;

SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and year of the Relevant Indian Standard	Description of the design of the Mark
(1)	(2)	(3)	(4)	(5)
1.		Sodium bisulphate (sodium metabisulphite) technical grade only	IS : 248-1978	The monogram of the Bureau of Indian Standards, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in Col. (2); the number of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.


[No. CMD/13 : 9]

नई दिल्ली, 1989-02-17

क्र. मा. 653.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उपनियम (1) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस मानक मुहर का डिजाइन, उसके शाब्दिक विवरण और संबंध भारतीय मानक की संख्या और वर्ष सहित नीचे अनुसूची में दिया गया है, वह निर्धारित कर दिया गया है।

भारतीय मानक ब्यूरो अधिनियम, 1986 और उसके अधीन बने नियमों तथा विनियमों के प्रयोजन के लिए, यह मानक मुहर 1985-11-01 से लागू होगी।

अनुसूची


क्रम सं.	मानक मुहर का डिजाइन	उत्पाद/उत्पाद श्रेणी	सम्बद्ध भारतीय मानक की संख्या और वर्ष	मानक मुहर के डिजाइन का शाब्दिक विवरण
(1)	(2)	(3)	(4)	(5)
		उच्च सामर्थ्य साधारण पोर्टलैंड सीमेंट	IS : 8112-1976	स्तम्भ (2) में दिखाई गई निश्चित शैली और परस्पर सम्बद्ध अनुपात में बनाया गया 'ISI' अक्षरयुक्त भारतीय मानक ब्यूरो का मोनोग्राम जिसमें भारतीय मानक की संख्या डिजाइन में दिखाएँ अनुसार मोनोग्राम में अंकित हो।

[संख्या सी एम डी/13 : 9]

S. O. 653.—In pursuance of sub-rule (1) of the rule 9 of Bureau of Indian Standards Rules, 1987 the Bureau of Indian standard hereby, notifies that the Standard Mark, design of which together with the description of the design and the number and year of the relevant Indian Standard is given in the Schedule hereto annexed, has been specified.

This Standard Mark for the purpose of the Bureau of Indian Standards Act, 1986 and the Rules and Regulations framed thereunder, shall come into force with effect from 1985-11-01;

SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and year of the Relevant Indian Standard	Description of the design of the Standard Mark
(1)	(2)	(3)	(4)	(5)
1.		High strength ordinary portland cement	IS : 8112-1976	The monogram of the Bureau of Indian Standards, consisting of letters 'ISI' drawn in the exact style and relative proportions as indicated in Col. (2); the number of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.

[No. CMD/13 : 9]

का. घा. 654--भारतीय मानक ब्यूरो प्रमाणन विनियम, 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो द्वारा अधिसूचित किया जाता है कि उच्च सामर्थ्य साधारण पोर्टलैंड सीमेंट की प्रति इकाई मुहर लगाने की फीस जिसका विवरण नीचे अनुसूची में दिया गया है, निर्धारित कर दी गई है और यह फीस 1985-11-01 से लागू होगी।

अनुसूची

क्रम संख्या	उत्पाद/उत्पाद की श्रेणी	सम्बद्ध भारतीय मानक की संख्या और वर्ष	इकाई	प्रति इकाई मुहर लगाने की फीस
(1)	(2)	(3)	(4)	(5)
1.	उच्च सामर्थ्य साधारण पोर्टलैंड सीमेंट	IS : 8112-1976	एक टन	20 पैसे

टिप्पणी:--मुहरांकन फीस की दर दिनांक 1988-07-01 से निम्नानुसार संशोधित कर दी गई है:--
40 पैसे प्रति इकाई
(इकाई-एक टन)

[संख्या सी. एम. डी./13:10]

S.O. 654.--In pursuance of sub-regulation(3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988 the Bureau of Indian Standards, hereby, notifies that the marking fee per unit for High strength ordinary port land cement details of which are given in the Schedule here to annexed, has been determined and the fee shall come into force with effect from 1985-11-01 :

SCHEDULE

Sl. Product/Class of Product No.	No. and Year of Relevant Indian Standard	Unit	Marking fee per unit
(1)	(2)	(3)	(4)
1. High strength Ordinary portland cement	IS : 8112-1976	One tonne	20 Paise

Note: Rate of Marking Fee has since been revised as under with effect from 1988-07-01.
40 Paise per unit (Unit one Tonne)

[NO. CMD/13 : 10]

का. घा. 655--भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो द्वारा अधिसूचित किया जाता है कि जिन विभिन्न उत्पादों का विवरण नीचे अनुसूची में दिया गया है उनको प्रति इकाई मुहर लगाने की फीस निर्धारित कर दी गई है और यह फीस उनके सामने दी गई तिथि से लागू होगी।

अनुसूची

क्रम संख्या	उत्पाद/उत्पाद की श्रेणी	सम्बद्ध भारतीय मानक की संख्या और वर्ष	इकाई	प्रति इकाई मुहर लगाने की फीस	लागू होने की तिथि
1	2	3	4	5	6
6.	दूर संचार के संकेत देने और सामान्य प्रयोजन के लिए लेक-लांसे टाइप की शुष्क बैटिरिया	IS : 596-1976	एक बैटरी	5 पैसे	1988-06-16
7.	सामान्य इंडोनिथरो प्रयोजन के लिए मृदु इस्पात तार की छड़े	IS : 7387--1975	एक टन	50 पैसे	1984-02-16

टिप्पणी:--IS 7387 के लिए मुहरांकन फीस की दर दिनांक 1988-07-01 से निम्नानुसार संशोधित कर दी गई है :
(00 रु प्रति इकाई)
(इकाई-एक टन)

[संख्या सी. एम. डी./13:10]

S.O. 655.--In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988. the Bureau of Indian Standards, hereby, notifies that the marking fee(s) per unit for various products details of which are

given in the Schedule hereto annexed, have been determined and the fee(s) shall come into force with effect from the date shown against each:

SCHEDULE

Sl. No.	Product/Class of Product	No. and Relevant Standard	Year of Indian	Unit	Marking fee per unit	Date of Effect
(1)	(2)	(3)	(4)	(5)	(6)	
1.	Leclanche type dry batteries for tele-communication signalling and general purposes	IS : 586-1976		One Batter	5 paise	1988-06-16
2.	Mild steel wire rods for general engineering purposes	IS : 7887-1975		One Tonne	50 Paise	1984-02-16



Note:-Rate of Marking fee for ISS - 7887- has since been revised with effect from 1988-07-01 as under:
Rs 1.00 per unit
(Unit=One Tonne)

[NO. CMD/13:10]

का. आ. 656.--भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उप नियम (1) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन मानक मुहरों के डिजाइन, उनके शाब्दिक विवरण और सम्बद्ध भारतीय मानकों की संख्या और वर्ष सहित जोड़े अनुसूची में दिए गए हैं, वे निर्धारित कर दिए गए हैं।

भारतीय मानक ब्यूरो अधिनियम, 1986 और उसके अधीन बने नियमों तथा विनियमों के प्रयोजन के लिए ये मानक मुहरे उनके बी गई तिथियों से लागू होंगे।

अनुसूची

क्रम सं.	मानक मुहर का डिजाइन	उत्पाद/उत्पाद श्रेणी	सम्बद्ध भारतीय मानक की संख्या और वर्ष	मानक मुहरे के डिजाइन का शाब्दिक विवरण	लागू होने की तिथि
(1)	(2)	(3)	(4)	(5)	(6)
6.		दूर संचार संकेतन और सामान्य इंजीनियरी प्रयोजनों के लिए लेकलाने टाइप की गुंफ बैटरियां	IS : 586-1976	स्तम्भ (2) में दिखाई गई निम्नलिखित और परस्पर सम्बद्ध अनुपात में बनाया गया "ISI" प्रशस्त्युक्त भारतीय मानक ब्यूरो का मोनोग्राम जिसमें भारतीय मानक की संख्या डिजाइन में दिखाए अनुसार मोनोग्राम के ऊपर अंकित हो।	1988-06-16
		सामान्य इंजीनियरी प्रयोजनों के लिए मृदु दम्पात तार की छड़े	IS : 7887 - 1975	स्तम्भ (2) में दिखाई गई निम्नलिखित शैली और परस्पर सम्बद्ध अनुपात में बनाया गया "ISI" प्रशस्त्युक्त भारतीय मानक ब्यूरो का मोनोग्राम जिसमें भारतीय मानक की संख्या डिजाइन में दिखाए अनुसार मोनोग्राम के ऊपर अंकित हो।	1984-02-16



[सं. मो एम डी /13 : 9]

कि. रा. परमेश्वर, महानिदेशक

S.O. 656.—In pursuance of sub-rule (1) of the rule 9 of Bureau of Indian Standards Rules, 1987 the Bureau of Indian Standards hereby, notifies that the Standard Mark(s), design(s) of which together with the description, of the design(s) and the number and year of the relevant Indian Standard(s), are given in the Schedule hereto annexed, has been specified.

These Standard Mark(s) for the purpose of the Bureau of Indian Standards Act, 1986 and the Rules and Regulations framed thereunder shall come into force with effect from the dates shown against each:

SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and year of the Relevant Indian Standard	Description of the design of the Standard Mark	Date of effect
(1)	(2)	(3)	(4)	(5)	(6)
1.		Leclanche type dry batteries for tele-communication signalling and general purposes	IS : 586-1976	The monogram of the Bureau of Indian Standards, consisting of letters 'ISI' drawn in the exact style and relative proportions as indicated in Col. (2); the number of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.	1988-06-16
2.		Mild steel wire rods for general engineering purposes	IS : 7887-1975	The monogram of the Bureau of Indian Standards, consisting of letters 'ISI' drawn in the exact style and relative proportions as indicated in Col. (2); the number of the Indian Standard, alongwith its year, being superscribed on the top side of the monogram as indicated in the design.	1984-02-16

[NO. CMD/13 : 9]

K R. PARAMESVAR, Director General

भूम मंत्रालय

नई दिल्ली, 22 फरवरी, 1989

का. आ. 657:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक, अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

MINISTRY OF LABOUR

New Delhi, the 22nd February, 1989

S.O. 657.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the bank of India and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SH. ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
PANDU NAGAR, KANPUR U.P.

Industrial Dispute No. 80/1981

In the matter of dispute :

BETWEEN

Sh. Virendra Kumar Agrawal,

C/o General Secretary,
Bank of India Staff Union.

C/o Bank of India LIC Building,

The Mall, Kanpur U.P.

Petitioner/Workman

AND

The Assistant General Manager,
Bank of India,
Hazratganj,
Lucknow U.P.

Opp. Party/Management

APPEARANCE :

Sh. J. C. Dhawan, for the petitioner/workman.

Sh. Ajai Bhatnagar, for the Management/Opp. Party.

1.

AWARD

2. The Central Government, Ministry of Labour, vide its notification No. L-12012/72/30-D. II-A dated 17th June, 1981, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Bank of India, Regional Office, Lucknow, in terminating the services of Sh. Virendra Kumar Agrawal, Clerk of their Katurba Marg Branch, Kanpur, with effect from 9-10-79 is justified ? If not, to what relief is the workman entitled ?

3. The facts about which there is almost no dispute between the parties are that the workman Sh. Virendra Kumar Agarwal (hereinafter referred to as Sh. Agarwal) was appointed as temporary clerk in the Bank of India at Kanpur and he worked with breaks between 31-1-74 and 14-3-75. His services were terminated by the management w.e.f. 15-3-75. Sh. Agarwal raised an industrial dispute before ALC(C) Kanpur, where a settlement was arrived at between the parties on 3-6-78 whereunder he was reinstated on 5-6-78. One of the terms of the settlement was that—

Shri Agrawal would have to appear in the departmental bank test for acquiring regular/permanent absorption in the Bank

Some time after his reinstatement Banking Service Recruitment Board (hereinafter referred to as BSRB) was constituted whereupon the management insisted Shri Agrawal to appear in the test to be conducted by BSRB. Reluctantly, after raising protest, directly and through Bank of India Staff Union, he agreed to appear in the said test, but due to his illness he did not appear in the said test. The management therefore, issued a memorandum dt. 8-6-79, calling upon him to explain why he did not appear in the said test fixed for 6-5-1979. After receiving his explanation, the management terminated his services w.e.f. 9-10-79.

4. The present dispute has been raised on behalf of Shri Agrawal by the Bank of India Staff Union (hereinafter referred to as Union). The Union has challenged the order of termination on a number of grounds. It is alleged by the Union that under the settlement dt. 3-6-78 Shri Agrawal was required to appear in a departmental bank test and not in a test to be conducted by BSRB. The condition of eligibility for the test conducted by BSRB were not the same as were for the departmental test. Even no change in the terms of settlement could have been effected by the management without complying with the provisions of Sec. 9-A I.D. Act. Further even though Shri Agrawal had forced to appear in the test conducted by BSRB, that did not give management any legal right to terminate his services until he had failed to qualify the departmental bank test. Not only that there were genuine grounds for his non appearing in the test held on 6-5-79 by BSRB. The Union has then alleged that Shri Agrawal/apPOINTMENT was against a permanent clerical vacancy and since he had continued working beyond 3 months after 5-6-78, he would be deemed to have selected for the purposes of making up the permanent vacancy in view of para 20.6 of the 1st bipartite settlement. The Union also claims benefit of paras 20.9-20.10 and 20.12 of the first bipartite settlement. Lastly, it is alleged by the Union that before terminating his services the management did not fully comply with the provisions of Sec. 25-F I.D. Act. The management paid salary in lieu of one month's notice and retrenchment compensation less than the amount actually due to Shri Agrawal.

5. In defence the management plead that there had been no violation of the terms of the settlement dt. 3-6-78. Further there is no force in the pleas raised by the Union to challenge the order of termination of Shri Agrawal. Shri Agrawal was duly paid notice and retrenchment compensation in accordance with the rate of pay prevalent at that time. In any event the management paid up the alleged deficiency by making him a further payment of Rs. 191.30 paise. In fact it was not a case of retrenchment and whatever payments were made to him were by way of abundant caution.

6. The management further pleads that Shri Agrawal was never appointed a clear permanent vacancy of a clerk. He was appointed as temporary employee on account of branch expansion programme. He appeared at the written test conducted by the department but failed and as such was not called for interview for appointment in the clerical cadre. Such temporary employees as were declared successful in the written test and interview were absorbed in the permanent cadre. These facts seems to have been pleaded by the management in respect of Shri Agrawal prior to his raising of industrial dispute before ALC (Central) Kanpur where settlement dt. 3-6-78 was arrived at between the parties.

7. In the rejoinder, the Union almost reiterated the facts alleged in the claim statement.

8. In support of their case the management filed the affidavit of Shri M. N. Bhatt, Regional Manager, posted at that time at Ghaziabad, and the Union in support of its case filed the affidavit of Shri Agrawal.

9. My learned predecessor Shri R. B. Srivastava, decided the reference in favour of the Union holding that the action of the management of the Bank in terminating the services of Shri Agrawal w.e.f. 9-10-79 was not justified. According to my learned predecessor there was no contravention of the settlement dt. 3-6-78 if Shri Agrawal did not appear in the BSRB test. In the alternative he believed his case of illness.

Against the award given by my learned predecessor the management filed Civil Writ Misc. No. 9661 of 1985 before the Hon'ble High Court, Allahabad. The Hon'ble High Court, by means of its order dt. 7-12-85 set aside the award and remanded the case for giving fresh award on merits in accordance with law and in the light of observation made in the body of the order. The Hon'ble High Court did not agree with the findings given by my learned predecessor that on 6-5-79 Shri Agrawal was ill as according to it my learned predecessor had not care to discuss any material upon which he based his findings. This question was therefore, left open to this Tribunal after remand. The Hon'ble High Court also observed that it was not impressed with the findings that under the settlement the employee could not be called upon by the bank to appear in the BSRB. The Hon'ble High Court further observed that it was not impressed that the findings of the Tribunal that the bank was not keen in complying with the terms of settlement and the bank's action in not examining the employee by the departmental test within a period of 3 months from the date of the settlement was malafide. From the side of the Union it was contended before the Hon'ble High Court that despite the specific plea raised that the employee was not qualified to appear before the BSRB, the Tribunal failed to go into this question. Finding force in the submissions made on behalf of the Union, the Hon'ble High Court gave the direction of the Tribunal to look into this question while giving fresh award.

10. After the remand of the case by Hon'ble High Court the management filed additional written statement and the Union led additional rejoinder. In the additional written statement the management pleaded that the Government of India vide their letter No 5/14/IR/77(i) dated 12-6-78, constituted Recruitment Board for recruitment of Officers and Clerical cadres personnel required for the nationalised Banks. The Board of Directors of the Bank passed a resolution on 28th October 1978 resolving that not later than 1st January 1979 all appointments of officers, specialists and clerks might be made through BSRBs. In view of the above instructions the bank could not conduct test for Shri Agrawal. The management further pleaded that BSRB Central Zone invited applications for recruitment to the clerical post in Banks including Bank of India in U.P. Zone. The said Board directed that the applications should reach them on or before 29th January, 1979. The Bank therefore, vide its letter dt. 5-1-79 advised Shri Agrawal to send his application to the bank alongwith necessary documents to enable to the bank to forward his application to BSRB before 29-1-79. Despite receipt of bank's letter Shri Agrawal did not submit any application whereupon by means of letter dt. 26-2-79, the bank called for his explanation. Shri Agrawal in reply stated that he became a permanent employee in the bank as he had worked for more than 270 days of work in the bank. However, later on good sense prevailed on him and he sent his application to the bank with the request to forward it to BSRB, although the time for submitting applications had expired long ago. On receipt of his application the Bank made a special request to BSRB and forwarded his application so that he might appear in the examination which was to be held on 6-5-79 BSRB agreed to the request of the bank and allowed Shri Agrawal to appear in the test on 6-5-79.

11. On receipt of the information, the Region Manager, of the Bank of India U.P. Region, informed the Manager, Kasturba Marg Branch of the Bank at Kanpur, by his letter dt. 20-4-79 that Shri Agrawal be informed that he was required to appear in the written test to be held on 6th May 1979. The letter was shown to Shri Agrawal who noted down its contents. In this connection another letter dt. 2-5-79 was sent to Shri Agrawal informing him that he was to appear in the written test on 6th May 1979. Instead of appearing in the said test Shri Agrawal sent an application for leave on 7-5-79 for 5-5-79 to 7-5-79, alongwith a medical certificate of his illness. In this way Shri Agrawal will sickness. After some time his leave application was fully abstained from appearing in the test on the pretext of medical grounds he never made a request to BSRB or the bank for carrying forward his candidature for giving him another opportunity to appear in a written test although such a request even if made could not be acceded to in view of

the Rules. Thereafter, the same facts have been repeated by the management in the additional written statement.

12. In the additional rejoinder it was alleged by the Union that the settlement dt. 3-6-78 was entered into between the parties after the scheme about recruitment had been discussed and the management was aware of the recruitment Board to be constituted. The condition agreed to was of appearing in the Departmental test and not in any test to be conducted by any outside Agency including the Recruitment Board. Moreover, the scheme was to commence from 1st October 1978. The so called resolution of the Board of Directors passed on 28-10-78 had no effect prior to the date of passing of the resolution. Moreover the BSRS which started functioning from 1979 was meant for fresh employment and not for persons already in employment. The other facts alleged are almost the same as had mentioned in the claim statement and in earlier rejoinder.

13. After remand the management filed the affidavit of Shri W. V. K. Rao, Chief Manager (I) Zonal Office, Bank of India, Lucknow, and the union filed the affidavit of Shri Agrawal and Shri J. C. Thareja, its General Secretary.

14. From the side of the Union it has been contended by the authorised representative of the workman Shri J. C. Dhawan, that under the settlement dt. 3-6-78 Shri Agrawal could not have been compelled to appear in the test conducted by BSRS and which was held on 6-5-79. In support of his contention he has referred to the evidence which the Union has led with a view to show that even after the settlement Departmental Tests have been held by the Bank for absorption of temporary employees of the Banks.

15. In this connection I have not much to say as the point stands concluded by the following observations of his Lordship in the order of remand;

"I am not impressed with the finding of the Central Tribunal that under the settlement the employee could not be called upon by the Bank to appear before the Banking Service Commission. I have already referred above the relevant term of the settlement as contained in paragraph 5 of the settlement. It is to be noted that the crucial words used in the said settlement are 'Departmental Bank Test'. These words, in my opinion, do not restrict the examination of the employee by the bank itself, on the contrary, if the bank gets such a test conducted through the Banking Service Commission, it has to be presumed that the Banking Service Commission will act in a more fairer and independent manner than the bank itself.

I am also not impressed with the finding of the Central Tribunal that the Bank was not kept in complying with the terms of the settlement and its action was mala fide in not examining the employee by the departmental test within a period of three months from the date of the settlement viz 3-6-78. There is material on the record before this Court that on 12-6-78 the bank had acquired knowledge of the fact that the Central Government was contemplating to constitute a fresh banking Service Commission. In the circumstances, the bank was justified in awaiting the constitution of the Banking Service Commission".

16. The second point that has been argued by Shri Dhawan on behalf of the Union is that on the date of the written test i.e. 6-5-79, Shri Agrawal, was over age and as such was not eligible to appear in the test. Annexure 1 to the affidavit of the management witness refers to the scheme of recruitment for Public Sector Banks. With regard to recruitment of clerical cadre it is laid down in para 5.6 that candidate should not be below 16 years and not above 26 years of age. The maximum age limit would be relaxable in respect of SC/ST candidates and other candidates falling under certain specific categories in accordance with the instructions issued by the Central Government from time to time.

17. Annexure IV and annexure V to the affidavit of Shri Agrawal are copies of letters dt. 3-3-79 and 20-2-79 respectively from Shri Agrawal and Shri Thareja, the President of the Union to the Regional Manager of the Bank raising the objection that Shri Agrawal was overage as per advertisement of the BSRS. Further in para 16 of his affidavit Shri Agrawal has made the averment that he was 27 years of age on 3-6-78. A suggestion was made to the management witness Shri Rao that the date of birth of Shri Agrawal is 21-5-51, to which his reply was that he could not say. I, therefore, believe the Union's case on the point that Shri Agrawal was overage for the purposes of recruitment to clerical cadre at the time when he was asked to submit his application by the Bank.

17. The matter does not end over here. The case of Shri Agrawal, was quite different from those who were to appear in the test to be held on 6-5-79 by BSRS. He was already in service and he was to appear in the test for regularization as per terms of the settlement. He was simply to qualify himself in the test. It was not required that his name should appear in the merit list of the selected candidates to be considered for absorption in the clerical cadre of the different banks for which the test had been held by BSRS. In the additional written statement it has been specifically pleaded by the management that on receipt of the application of Shri Agrawal, the bank made special request to the Recruitment Board and forwarded his application so that he could appear in the examination which was to be held on 6-5-79. The management's case further is that the Recruitment Board agreed to the request of the Bank and allowed Shri Agrawal to appear in the test on 6-5-79. The management has supported its case by means of the affidavit of Shri Rao who in para 10 of his affidavit has made the averment that Shri Agrawal was advised to appear for written test to be conducted by the Recruitment Board and all arrangements were made by the Bank to ensure that he faces no difficulty. Had the bank not acquired the permission of the BSRS, it would not have asked Shri Agrawal to appear in the written test to be held on 6-5-79. Therefore, the question whether Shri Agrawal was overage or not for the purposes of the said test is fully immaterial and it has got no relevancy for the purposes of deciding his case.

18. The third point to be considered in this case in the light of order of the remand of the Honble High Court is whether or not Shri Agrawal was ill on 6-5-79, the date on which the test was to be held.

19. The burden of proof on this point lies on the Union. The Union has simply relied on the statement of Shri Agrawal and the photocopy of the medical certificate annexure IX to the affidavit of Shri Agrawal. In his cross examination before remand of the case Shri Agrawal denied the suggestion that he was not ill on the said date. For reasons best known to the Union and Shri Agrawal, the doctor who had issued the certificate has not been examined. Thus there is no reliable evidence in this case from the side of the Union/Shri Agrawal in support of the factum of illness of Shri Agrawal. Therefore, the observations of the Honble High Court that the Central Tribunal has nowhere, not cared to discuss any material upon which this finding is based still holds good.

20. There is a well known saying that man may lie but the circumstances do not. If we examine the conduct of the Union/Shri Agrawal, prior to the date of the written test we will find that Shri Agrawal had no intention to appear in the written test fixed for 6-5-79. In this connection I would like to refer to annexures IV & V of the affidavit of Shri Agrawal. Annexure IV is the copy of the letter dt. 3-3-79 from Shri Agrawal to the Regional Manager, in para 3 the contents are as under;

- (a) I am overage as per advertisement of the Banking Service Recruitment Board and you have not mentioned anything to this regard in the letters under reference.
- (b) It is not a departmental examination which is being conducted by the Banking Service Recruitment Board as agreed by you before the Assistant Labour Commissioner (C), Kanpur.

Annexure V is the copy of letter dt. 20-2-79 from the President of the Union to the Regional Manager. Almost the same pleas as were raised by Shri Agrawal are found raised in it. From para 10 of the claim statement it appears that when Shri Agrawal was further pressed by the management to apply for BSRB test and threatened him with the termination of his services in the event of failure to do so Shri Agrawal sent an application to the management for BSRB test. A reading of the claim statement, rejoinder and additional rejoinder will show that the main insistence is on the point that Shri Agrawal could not have been compelled to appear in the test held by BSRB and that he had become permanent under various provisions of the Bipartite Settlement. Even during the course of arguments the submissions which were made by Shri Dhawan, were how a man with sufficient length of service would compete with fresh candidates who are fully prepared for the examination. Hence I hold that the Union/Shri Agrawal has been unable to prove that Shri Agrawal was actually ill on 6-5-79. The opportunity which was given by the Hon'ble High Court to the Union/Agrawal to prove their case on this point has not been utilised. It was in the knowledge of Shri Agrawal as has been admitted by him in his cross examination before remand of the case that examinations conducted by BSRB are on all India Basis and cannot be postponed for any individual. Even the medical certificate seems to be of doubtful character. In his cross examination after remand of the case Shri Agrawal has stated that medical certificate was actually issued to him on 7-5-79 but the doctor at his instance changed the digit '7' of the date to '5' when he told the doctor that he had been under his treatment since 5-5-79. This correction he admits has not been initialled by the doctor.

21. Another point raised by Shri Dhawan during the course of arguments was that no inquiry was held by the management into the alleged illness of Shri Agrawal. The management therefore, violated the principles of natural justice. In this plea I find no force. It is even admitted in para 11 to 13 of the claim statement that Assistant General Manager of the Bank at Lucknow issued a memorandum dated 8-6-79 to Shri Agrawal requiring him to show cause why he did not appear at the BSRB recruitment test held on 6-5-79 and why his services should not be terminated on that count. It was after the receipt of the letter (reply) of Shri Agrawal that the management terminated his services w.e.f. 9-10-79. No full fledged inquiry was required in such a case. An opportunity to explain his conduct was given by the management to Shri Agrawal, and this was all that was needed.

22. The last point for consideration is whether or not there was compliance of the provisions of section 25F I.D. Act, by the management. According to Shri Dhawan, the management did not fully comply with the provisions of section 25F I.D. Act. I have considered his contention in the light of the fact and find that the management substantially complied with the provisions of section 25F, while terminating the services of Shri Agrawal. In para 12 of his affidavit, the management witness Shri VVK Rao has made the averment that the Bank paid Shri Agrawal one month's salary in lieu of notice and sum of Rs. 1794 towards retrenchment compensation on the basis of wages is then drawn by him. There has been no cross examination of the witness on this point. Earlier i.e. before remand the management witness Shri MN Bhatt stated in the cross examination that the alleged compensation and salary in lieu of notice amounting to Rs. 2398, was paid to Shri Agrawal on 9-10-79 and it was not less than what he was entitled to under the second bipartite settlement. It appears that another settlement was arrived at between the Banks and their workmen which came into effect from 1-9-78 as has been referred to in para 19(M) of the claim statement. In para 11 of his affidavit it was stated by Shri M. N. Bhatt that as a result of negotiations between the Indian Banks Association representing to the Banks including Bank of India and All India Trade Unions of the Banks employees a settlement was signed on 1-8-79 revising certain pay scales of clerical cadre w.e.f. 1-9-79. It was provided in the settlement that implementation of the revised pay scale would be taken in hand on 17-9-79 and would be completed within two months therefrom. It was further agreed under the settlement dt. 31-10-79 between the same parties that imple-

mentation of the settlement would be effected latest by 31-12-79. With his affidavit he has filed copy of letter dt. 10-12-79 from the Head Office to the various offices of the Banks for immediate attention. If as result of revision of pay scales Shri Agrawal became entitled a little more amount that would not mean that the management had not complied with the provisions of section 25F of the I.D. Act. Management paid him one month's salary in lieu of notice and retrenchment compensation on the basis of rate of pay which he was drawing at the time of termination.

23. No other point is involved in this case. Hence I find no illegality in the action of the management in terminating the services of Shri Agrawal w.e.f. 9-10-79.

24. I, therefore, hold that the action of the management of Bank of India, Regional Office, Lucknow, in terminating the services of Sh. Virendra Kumar Agrawal, Clerk of their Kasturba Marg Branch, Kanpur, with effect from 9-10-79 is justified. The result is that the workman is entitled to no relief.

25. Reference is answered accordingly.

ARJAN DEV, Presiding Officer
[No. L-12012/72/80-D.II(A)(Pt)]

का. भा. 658:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 658.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government.

ANNEXURE BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 255 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

PARTIES:

Employers in relation to the management of Allahabad Bank and their workmen.

APPEARANCES:

On behalf of the workmen: Shri S. K. Tewary, General Secretary, Bihar State Allahabad Bank Employees Association.

On behalf of the employers: Shri Shrikant, Law Officer.
STATE: Bihar. INDUSTRY: Banking.

Dhanbad, the 25th January, 1989

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order o. L-12012/72/87-D. II(A), dated, the 11th September, 1987.

SCHEDULE

"Whether the action of the management of Allahabad Bank in withdrawing the Dearty Allowance from

Shri Surendra Pd. Singh after payment for more than two years regularly from 26-2-85 is justified? If not, to what relief is the workman entitled?"

The case of the workman is that the concerned workman Shri Surendra Prasad Singh (for brevity hereinafter referred to as S. P. Singh) was appointed as Peon-cum-Farash by the old Bhojpur Branch of Allahabad Bank. He had joined old Bhojpur branch of the Bank on 17-11-81 as Peon-cum-Farash when the concerned workman had joined at Old Bhojpur Branch there was another person named Kameshwar Pd. Rai who was then working as Peon-cum-Farash and was senior to the concerned workman. As Shri Kameshwar Pd. Rai was senior to the concerned workman Shri Rai was being given the special allowance attached to the post of Daftry. The service condition of the workmen in respect of internal promotion in the Bank is guided by the Promotion Policy. Rule 1(A) Part I of the Promotion Policy provides that the posts attracting special allowance in the subordinate cadre is a promotion and that the seniority of the subordinate staff has to be maintained station wise and that the length of service is to be reckoned from the date of appointment on probation. Shri Kameshwar Pd. Rai was promoted to the post of cashier on 7-8-82 and was transferred from old Bhojpur Branch of the Bank of Karakat Bank of Allahabad Bank. After the transfer of Shri Kameswar Pd. Rai on promotion the concerned workman became the seniormost person in the subordinate cadre in old Bhojpur Branch. He made a representation before the Branch Manager on 3-11-82 that as he was seniormost Peon in the Station and was performing the duties of Daftry he should be given the Daftry allowance as was being done in the case of Shri Rai. The said application of the concerned workman was received by the Branch Manager of old Bhojpur branch on 3-11-82 and he forwarded the application with endorsement to the General Manager for consideration admitting the position that the concerned workman was seniormost Peon-cum-Farash at old Bhojpur Branch. The branch Manager also stated in the said forwarding letter that there was no sanctioned post of Bill Collector at Old Bhojpur Branch by the concerned workman was also doing the work of Bill Collector. He requested that this fact may also be considered at the time of promotion of the concerned workman on the post of Daftry. Thereafter the Regional Office of the Bank at Patna issued letter dated 27-11-82 to the Branch Manager of Old Bhojpur stating that the seniormost Peon-cum-Farash can be paid the Daftry allowance if he performs the duty of the Daftry and Bill Collector besides his regular official duty. It was also stated in the said letter that the Daftry allowance was not a permanent allowance and it was being paid for the performance of work only. After the receipt of the said letter the Branch Manager vide his letter dated 20-1-83 informed the Regional Manager, Patna that earlier Shri Rai was being paid Daftry allowance through pay sheet on permanent basis and as such the concerned workman was also being paid the said allowance through pay sheet. He also informed the Regional Manager that the concerned workman was performing the work of Daftry and Bill Collector. The concerned workman was paid special allowance for working on the post of Daftry and continued without break till 26-2-85.

After the transfer of Kameshwar Pd. Rai on promotion, Shri Sheo Kumar Prasad Gond was transferred to Old Bhojpur branch from Semri Branch by the management on 4-10-82 on his own request. As stated earlier seniority in the subordinate cadre is reckoned on the station wise length of service and not overall period of service and the concerned workman was posted from before at Old Bhojpur Branch and so he became senior to Shri Gond and that was the reason that special allowance was being paid to the concerned workman for working as Daftry and not to Shri Gond. The said Shri Gond made representation claiming Daftry allowance. The Regional Manager without considering the case of the concerned workman and without giving him any opportunity to show cause reversed the concerned workman and withdrew his Daftry allowance and directed it to be paid to Shri Gond. Accordingly the concerned workman who was getting the special allowance since 23-9-82 to 26-2-85 was arbitrarily discriminated and since then Shri Gond is given the Daftry allowance. The concerned workman who was promoted to the special allowance carrying post of Daftry cannot be reversed to the post of Peon-cum-Farash in order to accom-

modate Shri Gond who was not entitled to be considered at the time of promotion of the concerned workman in view of Rule 8 Part 7 of the Promotion Policy.

On 2-4-85 the concerned workman made a representation to the Branch Manager against the order of his reversion from the special allowance carrying post of Daftry and in this representation he alleged that the name of Shri Gond was recommended on 9-3-84 by the Branch Manager for consideration to the post of Bill Collector but instead of considering the said matter the Daftry allowance being given to the concerned workman was snatched from him and was given to Shri Gond which was illegal. He prayed in that representation that his Daftry allowance be restored to him as he had been promoted to the said post. The management did not pay any heed to the request of the concerned workman. Then again the concerned workman made a representation to the Manager on 3-1-86 reminding him that the Branch of the Bank has been declared "C" category branch and the strength of the cash department has been increased and as the concerned workman is looking after all the works in the cash department he should be paid bill collector allowance. The concerned workman is being victimised by the management as he is a member of the Bihar State Allahabad Bank Employees Union and did not oblige the management by joining the management's sponsored trade union. When the management failed to redress the grievance of the concerned workman the union filed a representation before the ALC(C) Patna on 10-6-86 raising an industrial dispute on behalf of the concerned workman. The ALC(C) took up the conciliation and on the conciliation having failed the present reference was made by the Ministry of Labour, Government of India to this Tribunal for adjudication on receiving failure report from the Conciliation Officer. On the above facts it has been prayed that the management be directed to pay the Daftry allowance to the concerned workman from 26-2-85, the date from which the said allowance was withdrawn from him and to continue its payment.

The case of the management is that the Allahabad Bank is a nationalised Bank having its head office at Calcutta and Regional and Zonal Office at Patna. The working of the management Bank is governed by the laws of the land and by the bipartite settlement in force. The date of appointment of the concerned workman Shri S. P. Singh as Peon-cum-Farash is 27-11-81 and he is posted at Purana Bhojpur branch since then. Shri S. K. Gond Peon-cum-Farash whose date of appointment is 9-6-79 joined Purana Bhojpur branch on 2-10-82 on his request for transfer from Semri branch. Purana Bhojpur branch is a rural branch as per Banks classification and accordingly Daftry allowance is payable to the seniormost peon-cum-Farash as per existing norms. The concerned workman was paid Daftry Allowance prior to the posting of Shri S. K. Gond by virtue of his being the seniormost Peon-cum-Farash and even after the joining of Shri S. K. Gond in that branch. Even after the joining of Shri S. K. Gond at Purana Bhojpur branch the concerned workman continued to get the Daftry allowance as Shri Gond was under two years ban on account of his request transferred from Semri to Purana Bhojpur branch in terms of Rules of promotion. Although Shri Gond was senior to the concerned workman, his right on account of request transfer from Semri to Purana Bhojpur branch remained suspended for 2 years in terms of existing rules of promotion and after afflux of bar standing lifted, Shri Gond became eligible to claim seniority and Daftry allowance. There is no post of Bill Collector in Purana Bhojpur branch as i.e. the rural branch and hence no bill collector allowance was paid to the concerned workman. Admittedly Daftry allowance is paid to the seniormost Peon-cum-Farash of the Branch. The payment of Daftry allowance to the concerned workman before posting of Shri S. K. Gond and during the period of his two years bar was only an additional allowance paid for additional duties being performed by the concerned workman. When the bar of 2 years was completed Shri S. K. Gond being senior most Peon-cum-Farash at Purana Bhojpur branch was entitled to the Daftry allowance as per rules. The management also raised some technical grounds of objection in the W.S. but the same was not pressed during the hearing of the case. On the above facts it is submitted on behalf of the Bank that its action in withdrawing the Daftry allowance from the concerned workman after payment for more than 2 years is wholly justified and the concerned workman is not entitled to any relief.

The only point for consideration in this case is whether the management of Allahabad Bank was justified in withdrawing the Daftry Allowance of the concerned workman.

The management examined one witness in this case but the workmen did not examine any witness on their behalf. However the documents of the workmen were marked Ext. W-1 to W-4 and the documents of the management were marked Ext. M-1 to M-4 on admission of the parties.

The relevant facts of the case are admitted. It is admitted that the concerned workman Shri S. P. Singh was appointed as a Peon-cum-Farash at Purana Bhojpur branch of Allahabad Bank and is working as such from 27-11-81. Ext. M-1 is the photo copy of the service card which shows that the concerned workman was appointed at Purana Bhojpur branch on 27-11-81. It is also admitted that Shri S. K. Gond Peon-cum-Farash was appointed on 9-6-79 and joined Purana Bhojpur branch on 2-10-82 on his request from Semri branch. Ext. M-2 is the service card of Shri S. K. Gond Peon-cum-Farash which shows that he was appointed at Sitabdiara on 9-6-79 and from Sitabdiara he was transferred to Semri branch and that he was transferred from Semri branch to Purana Bhojpur on 1-10-82. Thus these two exhibits show that Shri S. K. Gond Peon-cum-Farash was senior to the concerned workman in as much as Shri Gond joined as Peon-cum-Farash on 9-6-79 and the concerned workman joined as Peon-cum-Farash on 27-11-81.

Admittedly, Shri Kameswar Pd. Rai who was posted as Peon-cum-Farash at Purana Bhojpur was getting Daftry allowance when the concerned workman joined there and after the promotion of Shri Kameswar Pd. Rai, the concerned workman was allowed Daftry Allowance from 23-9-82 and he continued to draw the Daftry allowance up to 26-2-85. It is also admitted that Shri Gond joined at Purana Bhojpur branch on 4-10-82 on his request transfer from Semri Branch. Inter station transfer is provided in Section 5(b) of Part VII of Rules for promotion at page 25. The said rule for promotion is marked Ext. M-3 in this case and is a settlement signed by the Allahabad Bank and All India Bank Employees Co-ordination committee in Calcutta on 22-1-83. Section 5(b) provides "without prejudice to the aforesaid rules, the management may effect inter-station transfers of members of subordinate staff at the latter's request, provided, however, that an employee whose transfer is so made shall have to forego his special allowance if any drawn by him earlier, and also shall not be eligible for promotion to any post carrying the special allowance or to officiate in such a post in a temporary vacancy within a period of two years from the date of such transfer". Thus it is clear from this rule that if an employee is transferred from one station to the other on his request, the employee is not entitled for promotion to any post carrying a special allowance for a period of two years from the date of such transfer. It was due to this rule that although Shri Gond was senior to the concerned workman he did not get special allowance of Daftry at Purana Bhojpur branch as he had admittedly been transferred from Semri branch on his request. Due to the said bar there was no question for allowing Daftry Allowance to Shri Gond for a period of 2 years from the date of his transfer. Section 2 of part VII of Ext. M-3 provides that "Station" shall mean a place within the limits covered by a corporation, municipality, notified Area council or Gram panchayat as the case may be. It is admitted by the parties that Purana Bhojpur Branch of Allahabad Bank is within the Gram Panchayat. Part I Section (i)(a) provides that promotion to the posts attracting special allowance in the subordinate staff cadre will be made on the basis of station wise seniority, the seniority being the length of service reckoned from the date of appointment on probation. It is clear therefore from this rule that the post of Daftry attracting special allowance for the subordinate staff cadre has to be made on the basis of station wise seniority and that the seniority is counted on the basis of the length of service of an employee from the date of his appointment on probation. Thus the seniority of a Peon-cum-Farash entitling him to the special Daftry allowance the seniority of the subordinate staff posted at the station is to be reckoned on the basis of the length of his service reckoned from the date of his appointment. Thus there is no room for doubt that Shri Gond was senior to the concerned workman in

length of his service at Purana Bhojpur branch and as such Shri Gond is eligible for the special Daftry allowance at Purana Bhojpur branch. Section 2(a) Part I provides that for the purpose of entitlement for promotion to a post attracting special allowance seniority of all the eligible members of subordinate staff at the station is to be considered. Thus according to Section 2(a) seniority of all the eligible members of the subordinate staff at Purana Bhojpur branch was to be considered for the special allowance of Daftry. This section also therefore shows that senior most employee in the subordinate staff at a station is entitled for the special allowance of Daftry.

Part VII Section 7(i) and (ii) of the Rules for promotion Ext. M-3 provides the procedure for filling up allowance carrying post. It provides that for filling up of allowance carrying post applications are invited for vacancy from the eligible candidates and the seniormost amongst the applicants will be eligible for appointment to the post and that other terms and conditions prescribed in these rules for promotion for each cadre shall apply. The date of eligibility for posting to allowance carrying post is to be reckoned as on the date of occurrence of the vacancy. It will appear from the W.S. of the parties that there was no post of Peon-cum-Farash at Purana Bhojpur Branch. It is nowhere stated in the W.S. of any of the parties that Shri Kameswar Pd. Rai was a Peon-cum-Daftry at Purana Bhojpur Branch prior to his promotion. It will also appear from the case of the workmen that when the concerned workman joined at Purana Bhojpur Branch there was only Shri Kameswar Pd. Rai among the subordinate staff and on transfer of Shri Kameswar Pd. Rai the concerned workman was the only sub-staff at the station as Peon-cum-Farash and as such the Daftry allowance was allowed to be paid to him. It is not the case of the parties that the concerned workman was promoted as Peon-cum-Daftry. Admittedly the concerned workman was a Peon-cum-Farash who also was performing the additional duties of Daftry for which additional allowance was paid to him. Ext. W-1 is a letter dated 3-11-82 from the Branch Manager of Purana Bhojpur to the Regional Manager, Patna it shows that there was a vacancy caused by the promotion of Shri Kameswar Pd. Rai from Purana Bhojpur Office on 7-8-82 and as the concerned workman was the seniormost Peon-cum-Farash in the said branch he was recommended for consideration for Daftry allowance. Ext. W-2 dated 27-11-82 is a letter by the Manager, Administration of Allahabad Bank, to the Manager Purana Bhojpur in response to the letter Ext. W-1. It will appear that the seniormost Peon-cum-Farash can be paid Daftry allowance subject to his performing the duties of Daftry and Bill Collector and besides that he is performing his regular official duties of Peon-cum-Farash. It was also stated in this letter that the Daftry allowance is not a permanent allowance and that the person who will be paid the allowance gets it because he is performing the work of Daftry. It is clear therefore that Daftry allowance is not a permanent post of Peon-cum-Daftry but this Daftry allowance is given for performance of the extra duty of the Daftry by a Peon-cum-Farash. Ext. W-4 dated 2-4-85 is an application by the concerned workman to the Manager, Purana Bhojpur Branch of Allahabad Bank. It will show that Shri Kameswar Pd. Rai, Peon-cum-Farash was getting Daftry allowance when he had joined Purana Bhojpur Branch on 27-11-82 and that after the promotion of Shri Kameswar Pd. Rai, the concerned workman was getting the Daftry allowance. This letter also does not show that Shri Kameswar Pd. Rai was a Daftry in Purana Bhojpur Branch and it shows that Kameswar Pd. Rai was only a Peon-cum-Farash getting Daftry allowance for performing extra duties of Daftry. In view of the documents it is clear that the concerned workman had not been promoted to the post of Peon-cum-Daftry. He was although posted as Peon-cum-Farash and was given the Daftry allowance for performing the duties of Daftry.

If it is accepted that the concerned workman had got promotion as Daftry, at Purana Bhojpur Branch after the promotion of Kameswar Pd. Rai it will mean that the junior persons will be getting promotion ignoring the claim of the senior. It will be against the principles of natural justice that the junior man could be promoted ignoring the seniority of a senior employee against whom there was nothing adverse. Moreover promotion to a higher post or a higher cadre cannot

be made stationwise as that would greatly prejudice the senior workmen in the cadre. According to the rules discussed above a post attracting special allowance in the subordinate staff cadre has to be made on the basis of stationwise seniority and the case of Shri Gond could not be overlooked after the period of bar of 2 years was completed. It is clear that after the completion of the period of bar, Shri Gond being senior to the concerned workman at the station, namely, at Purana Bhojpur branch was entitled to the special allowance of Daftry which was to be paid only to the seniormost Peon-cum-Farash at the station. It does not appear to reason that in the face of a senior Peon-cum-Farash at the station, a junior Peon-cum-Farash of the Station will be drawing the Daftry allowance ignoring the seniority of the senior Peon-cum-Farash. In the above view of the matter the management has rightly allowed Shri Gond who was the senior most Peon-cum-Farash at Purana Bhojpur branch to draw the Daftry allowance. The management did not take extra duty of Daftry from the concerned workman as the concerned workman was junior in service to Shri Gond and the payment of the Daftry allowance for more than 2 years to the concerned workman did not create any vested right to him to draw the said allowance as there was another senior Peon-cum-Farash at the station.

In view of the discussions made above I hold that the action of the management of Allahabad Bank in withdrawing the Daftry allowance from the concerned workman Shri S. P. Singh after payment for more than 2 years regularly from 26-2-85 is justified and that the concerned workman is not entitled to any relief.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-12012/72/87-D.II(A)]

नई दिल्ली, 24 फरवरी, 1989

का. आ. 659:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 24th February, 1989

S.O. 659.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI RAJAN DEV PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—
CUM-LABOUR COURT PANDU NAGAR KANPUR

Industrial Dispute No. 73 of 1886

In the matter of dispute

BETWEEN

Shri Mansoor Alam Ansari,
S/o Shri Munib Ansari,
C/o. S. S. Shukla Union Bank Of India
37 Sheo Charan Lal Road,
Allahabad, U.P.

AND

The Deputy General Manager
Allahabad Bank,
Hazaratganj,
Lucknow U.P.

APPEARANCES :

Shri K. N. Soni, authorised representative—for the workman.

Shri Rajeev authorised representative—for the Management.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/160/85-D.II(A) dated 21-4-86 has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Allahabad Bank in relation to their Khalilabad Branch in terminating the services of Shri Mansoor Alam Ansari Peon-cum-Farash is justified? If not, to what relief the workman concerned is entitled?

2. Workman's case in brief is that on 2-11-81, he was appointed as peon against an existing clear vacancy in B. O. Khalilabad, District Deoria (should be Basti) of Allahabad Bank. He worked continuously in the said branch for 93 days from the date of his appointment upto 6-2-82. Thereafter, his services were terminated w.e.f. 7-2-82. After termination of his services in the same very branch Shri Shanker son of Akalu was appointed on the said post of Peon. He held the said post from 9-2-82 to 8-5-82. Thereafter w.e.f. 10-5-82 Shri Muni Lal son of Shri Bharat was appointed in the said branch in place of Shri Shanker. Thus it is clear from the facts stated that Branch Office Khalilabad needed permanent employee for filling a clear existing vacancy of a peon on which he was initially appointed. The management is consequently guilty of adopting unfair labour practice. In the circumstances, he is entitled to be reinstated with full back wages and continuity of service w.e.f. 7-2-82.

3. The Management has contested the case. It has not admitted the facts stated by the workman in the claim statement. In the alternative it is pleaded that even if, for the sake of argument, the number of days of workman's deployment as workman are accepted, the provisions of relevant law do not confer upon him any right to get the relief claimed on this score. He is not at all entitled to the protection of Sec. 25 I.D. Act.

4. The other pleas raised by the management are that the dispute referred to the Tribunal is not an dispute much less an industrial dispute in as much as the workman never raised any demand in this regard whatsoever with the bank and that reference order is bad in law as the subject matter of the dispute does not come within the meaning of Industrial Dispute as defined in the Industrial Dispute Act.

5. In his rejoinder the workman alleges that he has raised the industrial dispute under section 2-A of the Industrial Disputes Act. He also alleges that there is no force in the plea raised by the management that the reference order is bad in law. The order of termination of his services, amount to his retrenchment and as such the provisions of section 25-F 25-G and 25-H I. D. Act, are attracted in the case. Junior and new workmen have been employed by the management in that very post and they are still working.

6. In support of his case the management filed the affidavits of Shri R. K. Verma, who has been the manager of Khalilabad Branch of the Bank since 5-7-86 and of Shri R. K. Raizada who had been the manager of the said branch from November 1976 to February 83. The management, however produced Shri Raizada for cross examination in the witness box. He was examined twice, once on 24-11-87 and second time on 26-8-88. On the other hand, in support of his case, the workman filed his own affidavit. Documentary evidence was also relied upon in support of their respective cases by both the sides.

7. In workman's case in short is that he was appointed as peon in B.O. Khalilabad District Basti on 2-11-81 against an existing clear vacancy of a peon and that his services were terminated w.e.f. 7-2-82, after he had worked continuously

for 93 days. His further case is that after termination of his services in the said branch the bank appointed one Shri Shanker in his place on 9-2-82 and the said Shri Shanker worked till 8-5-82 and after the termination of the services of Shri Shanker on 10-5-82, the bank appointed one Shri Munni Lal against that very post who worked for some months. His further case is that after the termination of the services of Shri Munni Lal and Shri Shanker he was given the job of peon. From the claim statement it is not clear whether he was the same old Shri Shanker or another person with the same name. About the second Shri Shanker the workman says nothing in his affidavit dated 16-6-87.

8 The management witness Shri R. K. Raizada who had been Manager at B.O. Khalilabad from November 1986 to February 1983. He was cross examined by the authorised representative for the workman twice, once on 24-11-87 and the second time on 26-8-88.

9 Shri Raizada, has deposed that the strength of sub staff at B.O. Khalilabad between 2-11-81 and 10-5-82 had been one peon cum farrash and one Arm Guard. He admits that the workman in question was engaged by him as peon cum farrash orally and his services were also terminated by him later on orally. According to him he was engaged on the basis of registration card issued to him by the Employment Exchange.

10 In his cross examination, done on 24-11-87 he admits that he cannot tell whether or not S/Shri Shanker and Munni Lal had been kept by him after the termination of the services of Shri Mohd. Alam. However, the post of peon cum farrash at the said branch did not remain vacant.

11 According to him persons who were engaged after Mohd. Alam and before the permanent appointment of Shri Dukhi Prasad were also given appointment on the basis of Registration Cards issued to them by the Employment Exchange.

12. Ext. M-1, is the photostat copy of the appointment letter dated 11-9-82, which shows that Shri Dukhi Prasad was given permanent appointment w.e.f. 23-4-82, Vacancies in which workman in question and others were given appointment occurred on account of promotion of one Shri Rajbali peon cum farrash as clerk. I may state here that whereas the workman has come forward with a definite case supported by his affidavit that he had worked for 93 days, the management witness is not sure as to for how many days actually the workman had worked. He has simply said in his cross examination that he has worked for less than 90 days. He could not tell the date of his joining service and the date on which he ceased working. In order to prove that the workman had worked for less than 80 days, the bank could not have produced its record in the form of register of attendance or vouchers showing for how many days he had been paid.

13. From the above evidence, I find that the workman was given temporary employment in the vacancy caused due to promotion of Shri Raj Bali Peon cum farrash as clerk at B.O. Khalilabad and that the workman had worked for 93 days from 2-11-81 to 6-2-82 I further find that before the vacancy was finally filled up through Shri Dukhi Prasad, after the termination of the services of the workman S/Shri Shanker, Munni Lal and some other persons were given temporary employments in the said vacancy.

14. It has been argued by Shri Soni, the authorised representative for the workman that there is infringement of section 25-H read with Rule 78 I. D. (Central) Rules, 1957 by the management in as much as the management did not make an offer of reemployment to the workman. Rather it filled up the vacancy after retrenching him firstly by giving appointment to Shri Shanker and Shri Munni Lal one after the other and finally by appointing Shri Dukhi Prasad in a permanent capacity.

15. On the other hand it has been contended by the authorised representative for the management that the argument is without any force. Section 25-H read with rule 78 apply to only those workmen who had been in the employment for a continuous period of not less than one year at the time of retrenchment.

853 GI/89—4

16. Let us examine section 25-H read with Rule 78.

Sec. 25-H I. D. Act reads as under :

Where any workman are retrenched, and the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, given an opportunity (to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons.

Rule 78 I. D. (Central) Rules 1957 reads as under :

At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancy by registered post to every one of all retrenched workmen eligible to be considered therefore to the address given by him at the time of retrenchment or at any time thereafter.

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior most retrenched workmen in the list referred to in rule 77 the number of such senior-most workmen being double the number of such vacancies ;

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workman ;

(Provided also that if a retrenched workman without sufficient cause being shown in writing to the employer does not offer himself for reemployment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion)

2. Immediately after complying with the provisions of sub rule (1) the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule.

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under Rule 77.

When Rule 78 is read in the light of rule 76 it will become clear that the retrenched workmen eligible to be considered for reemployment will be those who had rendered not less than one year of continuous service in the industrial establishment. Since the workman in question had put in only 93 days of service before his retrenchment he cannot be held entitled to the offer of reemployment from the management.

17. Shri K. N. Soni, has placed reliance on a number of ruling which are :—

1. Cawnpore Tannery Limited V. Guha (S) and others (1961) II LLJ 333 (SC)
2. Workmen of Subong Tea Estate V Subong Tea State and other (1964) I LLJ 733 (SC)
3. Indian Hume Pipe Company Limited V Bhima Rao 1965 II ILJ (Bom)
4. Muller and Phipps (India) Pvt. Limited V Their Employees Union and others 1962-II LLJ 222 (Delhi.)
5. British India Corporation V Labour Court and others 1978 Lab. IC 523 (Allid)
6. Devi Dayal Bhatnagar and others V Razza Textiles Limited 1979 Lab. IC Nos. 36 (Allid).

18. The first ruling (1961) II LLJ 110 (SC) was given in a case where the service of a workman had been terminated prior to insertion of section 25H I. D. Act.

19. The Second, Third and Fourth rulings were given in cases where the workman had put in more than one years continuous service.

20. In the Fifth and Sixth Rulings it was not specifically stated as to when the workmen were initially recruited or appointed.

21. There can be no dispute about the legal position that in view of section 25-H, the employer should make an offer of reemployment to the workmen when subsequent to their retrenchment vacancies occur. But this benefit in view of Rule 78 is available only to those retrenched employees who had put in before their retrenchment not less than one year of continuous service within the meaning of Section 25B. So in the case of the present workman section 25H is not applicable. Consequently, I find no force in the contention of the authorised representative for the workman.

22. The second point urged is that the management is guilty of unfair labour practice. According to him if the vacancy which had occurred due to promotion of Shri Rajbali, Peon-cum-Farrash to the post of clerk was to be filled up on a temporary basis until it was filled up permanently, the workman who was the first to be appointed temporarily should have been allowed to continue to work such till the date of appointment of Shri Dukhi Prasad. But what the management did was that it terminated his services w.e.f. 7-2-82 and appointed others in his place. He has also placed reliance on para 20.8 of the First Bipartite Settlement. On the basis of it he has argued that if the management fails to fill up a vacancy within the period of 90 days, the workman would be deemed to have become permanent. In the latter part of the argument I find no force. There is nothing in this para to show as to what will be the consequence if the management fails to fill up permanent vacancies during the period of 90 days. It does not say that in case of default on the part of management a person engaged as a temporary employee would ipso facto become a permanent employee. What I have been able to make out is that in the event of such a temporary employee being selected eventually, the period of service put in by him as a temporary employee would be adjusted against his period of probation. It may not be able to appoint a permanent hand within the said period of 90 days, but this simply constitute an irregularity on the part of the management.

23. In the first part of the argument also I find no force. Had the workman in question allowed to continue as temporary hand for a number of years without filling up the permanent vacancy by a permanent hand it could have been said that the management was guilty of unfair labour practice. As we have seen in this case his services were terminated after he had worked only for 93 days.

24. I, therefore, find the action of the management in terminating the services of the workman as not is justified. The result is that the workman is not entitled to any relief.

25. The reference is answered accordingly.

ARIAN DEV Presiding Officer
[No. 12012/160/85-D.II (A) (Pt.)]

नई दिल्ली, 20 मार्च, 1999

का. धा. 660.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक आफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनसंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-89 को प्राप्त हुआ था।

New Delhi, the 20th March, 1989

S.O. 660.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the Central Bank of India and their workmen, which was received by the Central Government on the 10-3-1989.

ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NEW DELHI

I. D. No. 39/81

In the matter of dispute between :

Shri Sham Lal Jain S/o Shri Sehri Mal, resident of
203/20, Trinagar, Delhi-35.

Versus

The Management of Central Bank of India, Regional
Office, Link House, 4, Bahadurshah Zafar Marg,
New Delhi.

APPEARANCES :

Shri T. C. Gupta—for the workman.

Shri D. D. Kapoor—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/93/80-D.II (A) dated 20th March, 1981 has referred the following industrial dispute to this Tribunal for adjudication.

"Whether the action of the management of Central Bank of India in terminating the Madipur Branch in Shyam Lal Jain, a clerk at its Madipur Branch in Delhi with effect from 13-4-77 was justified ? If not, to what relief is the workman entitled ?"

2. The workman Sham Lal Jain joined the services of the Central Bank of India in the clerical cadre w.e.f. 31-8-1966 vide memo dated 24-5-75 a show cause notice was served upon the workman to submit his explanation regarding various allegations mentioned therein to which the workman submitted his reply dated 29-5-75. Thereafter the following charge sheet dated 20-6-75 was served upon him :

"CHARGE SHEET

Mr. Shyam Lal Jain, Clerk, Madipur is informed that his explanation dated 29-5-75 in reply to our memo No. K/75/293 dated 24-5-75 is not satisfactory and the following charges are made against him :—

The action of Mr. Jain in signing the pay order for Rs. 73,624/64 favouring New Bank of India on 3-5-75 without preparing any debit or credit voucher, is

mala fide since he has no authority to sign such pay orders. The said pay order, it appears, was cancelled on 5-5-75 by tearing of the signatures thereon.

Further, on 6-5-75 Mr. Shyam Lal Jain is reported to have signed the pay order for Rs. 73,624.64 after preparing the same himself even though no cash was received in the books of the Bank for the issue of the said pay order. Mr. Jain had no authority to sign this pay order as he was working only as a Clerk and not officiating in place of any officer or Special assistant. As this act of Mr. Jain in signing the said pay order without any authority and without any amount being received by the Bank is an act prejudicial to the interest of the Bank, he is charged with gross misconduct under section 19(5)(j) of the Bipartite Settlement dated 19-10-1966.

2. Mr. Shyam Lal Jain had got an advance of Rs. 49,700 from the Bank on 10-5-75 and had lodged a cheque for Rs. 50,000 for adjustment of the overdraft account. The said cheque was returned unpaid on 14-5-75 with the reason "exceeds arrangement" and in spite of the cheque being relogged it was again returned unpaid on 16-5-75. Even though Mr. Jain had finally adjusted his overdraft on 22-5-75, his action in misusing the funds of the Bank from 10-5-75 to 22-5-75 is an act which is prejudicial to the interest of the Bank and is charged with gross misconduct under section 19(5)(j) of the Bipartite Settlement of 19-10-1966.

3. Mr. Jain obtained payment of Rs. 3500 on 15-4-75 for the purpose of getting new currency notes from the Reserve Bank of India. This amount has been adjusted by him only some time after 24-5-75. Thus even though the advance was granted on 15-4-75, Mr. Jain has misused this amount for more than a month and this act is prejudicial to the interest of the Bank and he is charged with gross misconduct under section 19(5)(j) of the Bipartite Settlement dated 19-10-1966.

4. Mr. Shyam Lal Jain in his explanation dated 29-3-75 has stated that on or about 22-3-75 a cheque for Rs. 73,624.64 p. presented in clearing was returned unpaid by the New Bank of India. The said cheque was returned by the New Bank of India on counter on 22-3-75 to Shri Shyam Lal Jain. As the said cheque has still not been traced and neither debited to the account of the party namely M/s. Aggarwal Oil Traders, Mr. Jain has acted in a grossly negligent manner in not debiting the account of the party immediately on receipt of the returned cheque and is therefore charged with gross misconduct under section 19(5)(j) of the Bipartite Settlement of 19-10-66.

Mr. Shyam Lal Jain is hereby informed that the enquiry in the matter will be conducted by Shri K. L. Kalra on 10-7-75 at our Madipur Branch at 11 A.M. and the enquiry proceedings will continue thereafter till they are concluded, subject to inevitable circumstances when the proceedings may be adjourned to some other date.

Mr. Jain is hereby required to be present at the appointed place, time and date. He should keep ready his witnesses and other documents he intends to produce in the case for the purpose of his defence. He is fully entitled to examine the documents and to cross-examine the witnesses produced by the Management to prove the aforesaid charges against him.

Mr. Jain is allowed to be represented by a representative of the registered trade union of Bank employees on the express understanding that allowing such a representative does not mean that the Management recognises any Union or Association of the employees.

In case Mr. Jain fails to present himself abstain from participating in the enquiry on the aforesaid date or adjourned dates from time to time during the enquiry proceedings the enquiry shall be completed ex parte in his absence and decided accordingly.

Mr. Jain is further advised that pending enquiry he is suspended from service with immediate effect. During the period of his suspension he will draw during the first three months 1/3rd of the pay and allowance he would have drawn but for the suspension, and thereafter at 1/4 of pay and allowances he would have drawn but for the suspension. Mr. Shyam Lal Jain is informed that if after further investigation and further lapse on the part of Mr. Jain is noticed then the Management will be free to issue a supplementary charge sheet.

Sd/-

Zonal Manager".

3. The enquiry against the workman was conducted by Shri K. L. Kalra named as Enquiry Officer in the charge sheet itself. The enquiry against the workman commenced on 10-7-75 and concluded on 2-11-1976. Shri K. L. Kalra Enquiry Officer recorded his findings vide undated report placed on the record and found all the charges proved against the workman and proposed punishment of "discharged from service without notice" and a show cause notice was issued to the workman if he had to say anything against the proposed punishment. The workman submitted reply dated 24-3-1977 to the following effect :

"Dear Sir

I have been received your findings of my case. I have nothing to say for the punishment proposed by you.

Hoping for your favourable consideration.

Thanking you.

Yours sincerely,

Sd/-

(SHYAM LAL JAIN)"

Dated : 24-3-1977.

Then the Enquiry Officer issued the memo dated 28-3-77 which reads as under :

MEMO

Vide my letter No. K/LK/3/77(124)/3339 dated 8-3-1977, I have given my findings and have proposed punishment of discharged from service without notice in this case. Since Mr. Jain vide his letter dated 24-3-1977 has stated that he had nothing to say for the punishment, I have got no option but to confirm the punishment as proposed by me earlier.

Sd/-

(K. L. KALRA)

Enquiry Officer."

4. While the Management has defended the enquiry conducted against the workman as fair and proper and asserted that the order of termination of service of the workman is legal and valid, the workman has contended that the order of termination of his services is illegal and unjustified because the enquiry held against him is vitiated being not fair and proper inter alia on the following grounds :

- (1) Denial of reasonable opportunity of defence by arbitrary refusal of workman's request for permission to engage a lawyer for his defence.
- (2) Arbitrary refusal to permit the workman to be defended by an office-bearer of the Union of which he subsequently became a member.
- (3) Exploitation of the absence of defence representative by the bank representative in putting leading questions to the prosecution witnesses.
- (4) Non-payment of subsistence allowance which caused mental worry and resulted in grave prejudice to the workman.
- (5) Non-supply of statements/documents relied upon by the bank to frame charges against the workman.

- (6) The termination of the services of the workman was not discharge under clause 19.6 (c) of the Bipartite Settlement.
- (7) Enquiry Officer was unauthorised to dispose of matter on his own findings.
- (8) The findings of the Enquiry Officer were perverse being not based on legal evidence.

5. I have given my anxious consideration to the entire facts and circumstances of this case and the submissions made by the Id. representatives of both the parties and I am of the opinion that there is considerable substance in almost all the grounds made by the workman.

6. The enquiry commenced on 10-7-75. The workman has proved by producing documentary evidence that he had resigned from his union on 9-7-75. Therefore, at the time of the commencement of the enquiry the workman was not a member of any union. The request of the workman made at the commencement of the enquiry for permission to be represented by a lawyer should have been given due consideration and should not have been perfunctorily rejected by the enquiry officer, who passed the following cryptic order :

"Request for bringing a lawyer in domestic enquiry is declined and Mr. Jain should bring a representative as laid down in para 19.12 of the Bipartite Settlement."

On the next date of hearing when the workman again made a request for being allowed a lawyer and that he wanted to make a representation in this behalf to the Zonal Manager, the Enquiry Officer again rejected the request with the following observation :

"Regarding the allowing of a lawyer for the defence of Mr. Jain, I have already disposed of the point. It is a domestic enquiry and it is not the policy of the Bank to allow lawyers in these enquiries. However, Mr. Jain should arrange his defence as permitted in para 19.12 if he so chooses."

Shri K. L. Kalra, Enquiry Officer in his statement as MW1 has confirmed that the banks representative at the enquiry Mr. B. P. Tandon was a Law Graduate. In all fairness when the banks representative was a Law Graduate, the Enquiry Officer should have permitted the workman to be represented by a lawyer. The clause 19.12 of the Bipartite Settlement on which reliance has been placed by the Enquiry Officer is reproduced below :

"An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet..... He shall also be permitted to be defended—

- (i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the Enquiry.
- (y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of the employees of the bank in which he is employed.

OR

- (ii) at the request of the said union, by a representative of the state federation or all India organisation to which such union is affiliated.

OR

- (iii) with the Bank's permission, by a lawyer.

It is apparent that even the Bipartite Settlement permits the representation by a lawyer with the banks permission. The discretion of the bank for grant of permission for representation by a lawyer has to be exercised judicially and cannot be arbitrarily rejected as a matter of policy for all cases

without reference to the facts and circumstances of an individual case. In the present case the workman was without any representation by any union and his request for being represented by a lawyer should have been favourably considered particularly in view of the fact that the banks representative was a law graduate. In this regard reference may be made to a decision of the Bombay High Court in *Antonic B. Furtade V. Chairman, Bank of India* 1986 Lab. and Ind (Cases—613), wherein it was held as under :

"Undisputedly, under the said para 19.12, a delinquent employee can be represented in a departmental enquiry either by a representative of a registered trade union of the bank employees or by a representative of the state federation or All India Organisation to which such union is affiliated, or, with the permission of the bank, by a lawyer. It is thus clear under the aforesaid Agreement that the representation of a delinquent employee by a lawyer in a departmental enquiry proceedings is permissible, though subject to the prior permission of the Bank. It appears that ordinarily, such representation should be by a representative of the Trade Union, but there is nothing in the said para 19.12 as to imply that only when the representative of the Union is not available, the representation by a lawyer can be permitted. It is clear to us that the said para 19.12 leaves the question open and it is for the Bank in its discretion to grant, in a given case, permission to a delinquent employee to be represented by a lawyer in the departmental enquiry proceedings. Hence, the question that arises is whether this discretion can be used according to the whims of the management. Manifestly, the answer is in the negative, for while dealing with an application of a delinquent employee seeking such permission, the Bank management should not act arbitrarily, but should, on the contrary, be reasonable and fair. Apparently, however, this approach did not find favour with the respondent. We say so, because in the course of his arguments, Mr. P. Mulagaokar, the learned counsel representing the respondents 1, 3, 4 and 5, while making a weeble attempt to justify the rejection of the petitioners request, merely contended that if such permission is granted, it will open the floodgates and so, in each and every case delinquent employees will ask as of right for permission to be represented by lawyers. Obviously, there is no merit in this submission of the learned counsel, for, if discretion is properly used, and permission is given in deserving cases, the question of opening the 'flood-gates' does not at all arise. But such submission is an eye opener and we may point out that in the present case it is apparent that the respondents were bent to refuse the petitioner's request for that reason only, and no other..... In these premises where it is apparent that the respondents refused the permission, despite the seriousness of the charges, only because in their opinion, such permission would open the floodgates, the action of the respondents in refusing the sought permission is unreasonable, arbitrary and violative of the principles of natural justice."

The Hon'ble Supreme Court in case *Board of Trustees Port, of Bombay Versus Dilip Kumar* 1983 Lab. and Ind. Cases 419, held as under :

"Whether in a disciplinary enquiry before a domestic Tribunal, where the employer appoints as presenting-cum-prosecuting officers the persons who are legally trained to represent the employer, and the delinquent employee seeks permission to defend himself by a legal practitioner, will the denial of of such a request would vitiate the enquiry on the ground the delinquent employee has not been afforded a reasonable opportunity to defend himself? Referring extensively to the earlier case law on the subject, the Hon'ble Supreme Court came to the conclusion that where in a domestic enquiry, the delinquent officer is pitted against a legally

trained mind and he seeks permission to appear through a legal practitioner, the refusal to grant the request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated".

It is therefore held that the arbitrary rejection of the request of the workman to be represented by lawyer in this case has resulted in grave prejudice to him and it amounts to denial of reasonable opportunity of defence and a violation of the principle of natural justice.

7. Not only the request of the workman to engage a lawyer was declined, even his most reasonable request for being represented by Shri Tara Chand Gupta an office bearer of the Central Bank Employees Union, which union the workman had joined during the course of the proceedings, was also declined. The Enquiry Officer in his cross examination as MW1 has admitted that on 12-12-75 the workman had intimated that he had become member of the Central Bank Employees Union and that he may be permitted to be represented by the General Secretary of the said Union but his request was declined on the ground that it was doubtful whether a representative could be engaged during the pendency of the enquiry. Thus the enquiry Officer has betrayed a total lack of knowledge of the principles of jurisprudence and normal human behaviour. In the first instance he should have got his doubts clarified by reference to the rules or seeking instructions from his superiors and in the absence of any such exercise the benefit of doubt should have been given to the workman. It further appears from the proceedings dated 1-4-76 that on 30-3-76 the workman had submitted another letter to the enquiry officer reiterating his request to be represented by the General Secretary of the Central Bank Employees Union but the Enquiry Officer rejected the request with the reason "I have already given my ruling and I stick to it". The Enquiry Officer in his cross-examination as MW1 has admitted that on 30-3-76 the workman gave a representation again pleading the request for being allowed to engage the general secretary of the Central Bank Employees Union as his representative and he was informed that he had already been given his ruling. However a perusal of the enquiry proceedings held after the workman's first representation dated 12-12-75 till 1-4-76 show that no such ruling was ever given to the enquiry officer on the workman's request. On 1-4-76 the workman got his protest recorded to the following effect.

"Under the circumstances I have no alternative but to participate in the enquiry, of course, under protest and without prejudice to my right to challenge the arbitrary decision of the Enquiry Officer".

It was only on 2-6-76 by which time evidence of all the bank witnesses had been recorded that the enquiry officer allowed the workman to bring the General Secretary of the bank Union to defend him. In a case of similar nature the Hon'ble Supreme Court in C. L. Subramaniam Vs. Collector of Customs 1972 Lab. IC 1049 held as under :

"21 From the facts set out above, it is clear that the Enquiry Officer did not afford the appellant necessary facility to have the assistance of another Government servant in defending him which assistance he was entitled to under the rule. He was deprived of that assistance solely because of the indifferent attitude adopted by the Enquiry Officer. Therefore, we have no hesitation in coming to the conclusion that the Enquiry Officer had clearly breached R.15(5).

22. It is needless to say that R.15 is a mandatory rule. Moreover when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present this case as best as it should be. The accusation against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be. In such a situation, he cannot be expected to act calmly and with deliberation. That is why Rule 15(5) has

provided for representation of a Government servant charged with dereliction of duty or with contravention of the rule by another government servant or in an appropriate case by a legal practitioner".

Similarly Bombay High Court in V. Shambhamurthy Vs. Union of India (1986 II Lab. Law Notes 349) has held as under :

"18. Far from rejecting the appellant's request for legal assistance, the department should itself on its own initiative have given liberty to the appellant to avail himself of legal assistance. The department did not do so and thereby denied the appellant a reasonable opportunity of defending himself; the department cannot be heard to say look even so the appellant did well for himself; look at the amount of cross examination and the arguments he advanced. It is not the volume but the quality that matters, pitted as he was against a prosecutor whose experience in domestic enquiries totally eclipsed the total lack of experience of the appellant. Compared to the department's prosecutor, the appellant was a babe in the woods. The very principles of natural justice were violated."

This arbitrary action of the enquiry officer in initially declining the request of the workman in engaging the general secretary of the Central Bank Employees Union and subsequently allowing the request only after the entire evidence of the Bank witnesses had been recorded has certainly resulted in grave prejudice to the workman and the entire enquiry proceedings are liable to be set aside on this short ground.

8. It has been pleaded by the workman in para 19 and 20 of the statement of claim that in the absence of any one to represent him in the enquiry till 12-6-76, the banks representative was given full liberty by the enquiry officer in the matter of examination of the bank's witnesses even to the extent of openly prompting them by reading out to them the charges against the workman on which they were to give their evidence and thus virtually telling them as to what they were to say in support of the charges against the workman. The workman has extracted some of the leading questions put up by the banks representative to the various witnesses and annexed the same as annexure W-9 to the statement of claim. I have perused these extracts and also enquiry proceedings and I am of the opinion that some of the questions were of leading nature and should not have been allowed to be asked. It appears that the absence of any representative of the workman was fully exploited and such leading questions were allowed to be asked and this also resulted in causing prejudice to the workman.

9. On 9-8-75 the workman pointed out to the enquiry officer that his subsistence allowance was not being paid by the Management and got it recorded as under :

"This shows how deeply the management is prejudiced against me, as the non-payment of my subsistence allowance may have adverse mental effect on me due to resulting family worries and even came in my way of attending the enquiry proceedings. I request the E.O. to instruct the Bank to pay my subsistence allowance for June and July, 1975 and in future by the end of the month. It is the duty of the E.O. as a quasi-judicial authority to protect me from such type of harassment and physical and mental torture during the course of the enquiry."

The workman again informed the inquiry officer on 22-9-75 that no subsistence allowance had been paid to him from the date of his suspension. Still, no subsistence allowance was paid and the workman had to move the labour court for recovery of subsistence allowance by filing an application under section 33-C(2) of the I.D. Act on 6-5-76. It is only thereafter that the Management released the subsistence allowance to the workman. Miss C. Rao MW-2 in her affidavit sought

to justify non-payment of subsistence allowance to the workman on the ground that recoveries therefrom had to be made for loans taken by the bank and other sources. One has admitted that recoveries made from the subsistence allowance by the bank were refunded to him after he filed an application under section 33-C(2) of the I. D. Act. This goes to show that the bank had unlawfully made the deduction from the subsistence allowance of the workman and the harassment and hardship caused to him could not be undone by the subsequent refund of the unauthorised deductions. In case *Fakirbhai Fulabhai Solanki V. Industrial Tribunal, Gujarat* (1986-11-L.L.N. 74) the Hon'ble Supreme Court considered the case of the appellant who was kept under suspension pending disposal of employers application under section 33(3) of the Id. Act without paying him any subsistence allowance because there was no provision therefor in the standing orders, and it was held that non-payment of any subsistence allowance to the appellant during the said proceedings resulted in denial of reasonable opportunity to the workman to defend himself which led to the violation of the principles of natural justice. On the same analogy, non-payment of subsistence allowance to the workman in the present case during the pendency and continuance of the enquiry proceedings for almost a year has to be similarly viewed and even more so because therewas a distinct provision in the Sastry Award (para 557) for payment of subsistence allowance to the workman during the pendency of the enquiry.

10. In the enquiry proceedings held on 26-9-75 the workman had requested for being supplied copies of the submissions/reports made by the banks witnesses against him before the framing of charges against him. The Enquiry Officer after first recording that the workman would be given such statements or report, added that he would give his ruling on the next date. However, no such ruling was given on the next date or thereafter. The workman pressed his request on 3-10-75 and on the next dated 16-10-75 the banks representative made a statement to the following effect :

".....We are informed by the Zonal Office that there were several oral complaints from several parties on the basis of which the Zonal Office deputed some senior officer to look into the matter, on the basis of which a memo was served and a charge sheet was framed and served on Mr. Shani Lal Jain. The anonymous written and oral complaints are part and parcel of the confidential documents which need not be delivered."

In the course of the evidence of bank witness B. S. Gandhi it transpired that the accountant of Madipur Branch Shri K. R. Sharma, who was also a bank witness had given a report about the irregularities prevailing at the branch. The workman requested for being supplied copy of the said report and the Enquiry Officer directed the bank representative to comply with the request of the workman on the next date. When the workman pressed for his request on the next date the banks representative avoided to produce the same for the reason that it was a secret and confidential document and so its copy could not be supplied to the workman. The Enquiry Officer disposed of the request with the remarks that "if the Management assumes it to be secret document it is their outlook". It was for the Enquiry Officer to decide whether or not the claim of the Management that it was a privileged document was justified and he could not have abandoned his duty by simply observing that if the management deemed it to be secret document it was their outlook. The Hon'ble Supreme Court in case *Kashinath Dikshite V. Union of India* (1986 Lab. and Ind. Cases-1939) has held as under:

"The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against the charges on which enquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses to be examined

against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the enquiry in support of the charges levelled against the Government servant....."

11. In this case the enquiry officer himself proposed the punishment of discharge from service without notice but no mention has been made of the provisions of the Bipartite Settlement under which the punishment was awarded. The Enquiry Officer in his statement as MW-1 has clarified that the punishment was awarded under para 19.6 of the Bipartite Settlement which for convenience of reference is reproduced below :

"19.6 An employee found guilty of gross misconduct may :

- (a) be dismissed without notice; or
- (b) be warned or censured, or have an adverse remark entered against him; or
- (c) be fined; or
- (d) have his increment stopped; or
- (e) have his misconduct condoned and be merely discharged.

It has been further stated by the Enquiry Officer in his cross-examination that the workman was not discharged after condoning his misconduct. There cannot be any two opinions that the punishment has to be the one which has been provided in the Bipartite Settlement. The Bipartite Settlement provides that an employee found guilty of gross-misconduct may have his misconduct condoned and be merely discharged. In other words in the case of punishment of discharge, the misconduct has to be condoned but the enquiry officer has stated that his misconduct had not been condoned. Therefore, the punishment awarded is not in consonance with the provisions of the Bipartite Settlement.

12. In the present case the charge sheet was issued by the Zonal Manager who undisputedly was an authority higher than Shri K. L. Kalra the Enquiry Officer who was appointed to hold the enquiry by the Zonal Manager by the order recorded in the charge sheet itself. It is, therefore, apparent that the Zonal Manager had restricted the function of Shri K. L. Kalra only to holding the enquiry and submitting his report. But the Enquiry Officer over stepped his function and disposed of the matter himself by first proposing the punishment on the basis of his own findings and then himself confirming the proposed punishment. It has been argued on behalf of the bank that Shri K. L. Kalra as Enquiry Officer could act as Disciplinary/Punishing Authority. It may be so, but in the present case, in view of the order contained in the charge sheet issued by the Zonal Manager, a Superior authority, it appears that his function had been restricted to hold the enquiry and to submit his report to the Zonal Manager. The Hon'ble Allahabad High Court in *Sher Bahadur Singh Vs. Union of India* 1977-Lab. and Ind. Cases-1562, was held as under :

"Thus, both the Assistant Security Officer and the Security Officer were disciplinary authorities for the petitioner. The Security Officer issued an order on 20-10-70 appointing the Assistant Security Officer as the Enquiring Officer into the charges framed against the petitioner; as the Assistant Security Officer had been directed to conduct an enquiry, he was bound to report to the Security Officer with his findings. He was not competent to dispose of the matter on his findings that the charges were not proved. He had to submit his findings to the Security Officer who had taken control of the proceedings....."

From the foregoing discussions, it follows from the facts and circumstances of the present case, that the proper and competent disciplinary authority was the Zonal Manager and

not the Enquiry Officer and, therefore, the order of imposition of penalty passed by the Enquiry Officer appears to be without authority.

13. The Management has tried to read too much in the workman's letter dated 24-3-77 which has been reproduced above. It appears that the workman had given this letter without comprehending the meaning and imposition of show cause against the proposed punishment or under sheer frustration. However, his prayer for favourable consideration shows that he was not agreeable to the punishment proposed by the Enquiry Officer. The observation made by the Enquiry Officer in the memo of final Order that "Since Mr. Jain vide his letter dated 24-3-77 has stated that he had nothing to say for the punishment, I have got no option but to confirm the punishment as proposed by me earlier" goes to show that the punishing authority did not apply his mind to the sufficiency or insufficiency of the punishment and this has also resulted in denial of justice to the workman.

14. On a reading of the findings of the Enquiry Officer, an impression is left in the mind that the enquiry officer has imported his personal knowledge into the proceedings about the goings on in the branch in which the workman was posted at the relevant time. It further becomes clear that one Mr. Wadhwa was the Branch Manager at the relevant time and he was subsequently dismissed from service. The enquiry report gives the impression that the misdeeds of said Mr. Wadhwa are sought to be foisted on the workman. There is an undertone in the enquiry report that Mr. Wadhwa and the workman were hand in glove with each other which means that it was a case of conspiracy. In that event, there should have been charge of conspiracy against the workman but nothing of the sort has been done. In this regard, I quote some of the observations made in the enquiry report as under :

"Further Mr. R. K. Aggarwal had stated that he received the proceeds of this voucher through Shri H. C. Wadhwa in the morning, whereas Mr. Ram Dass Rallia, Chief Cashier had stated that it was cheque for Rs. 70,000 drawn by Hariram Oil Company which was appropriated towards the receipt and the balance amount was received in cash."

"While making a defence, Mr. Jain had tried to take full advantage of Mr. Wadhwa, the then Branch Manager of the office who was subsequently dismissed by the Bank. When I go through the statement of the witnesses, and exhibits produced before me it is difficult to judge as to who was acting on whose instructions. Both were involved in doing irregular acts. Mr. Wadhwa allowed Mr. Jain overdraft of Rs. 50,000 against cheque which was not paid by the drawee Bank despite lodging it twice. This act of Mr. Wadhwa in allowing advance of Rs. 50,000 to a clerk on his own flouted all the rules, norms and practice of the Bank. Their alliance could be seen in the succeeding para which brings forth the motive of Mr. Jain.

On 22-3-1975, Mr. Jain received an unpaid cheque for Rs. 73,624.64 p, on counter from the New Bank of India. In the normal course, this amount would have been debited to the party's account utmost by 24-3-1975 (23-3-1975 being Sunday) but it was never done, and a novel procedure was adopted by Shri Jain and Shri H. C. Wadhwa by sending pay order to the Bank and leaving the column 'an account of' blank, and when pay order was presented by New Bank of India, on pointing out by Mr. Prashar this lacuna Mr. Wadhwa promptly wrote the name of Goverdhan Oil Company as if the cash was deposited by this company.

A pertinent question is as to why Mr. Shyam Lal Jain and Mr. H. C. Wadhwa did not debit this amount to the account of M/s. Aggarwal Traders and the entry was not properly vaunted through. They deviated from the said procedure and regular

course of action. They allowed the party to avail the benefit of this huge amount as long as they

could. When there was amounting pressure from New Bank of India for its reimbursement, they adopted this course. It is a case of quid-pre-qua.

A clean advance against clearing cheques was against all norms of banking procedure and beyond the discretionary powers of the Branch Manager. Mr. Shyam Lal Jain should have immediately adjusted his account on returning of cheque. No documentary evidence was produced in support of the mortgage deed.

The act of relodging of returned cheque again aggravated the matter which reflected the connivance of the Branch Manager with the delinquent employees.

Mr. Jain was working as a clerk in the Bank. It is unthinkable that the clerk should get an advance of nearly Rs. 50,000 from the Branch Manager. Mr. Jain was fully aware of his limitation and the limitation of the Branch Manager in allowing advances to staff members. Such acts of grossly flouting the norms rules and regulations could hardly be found in the Bank history. The Branch Manager of the Branch certainly did it at his own cost. Mr. Jain who was only a clerk, got an advance of Rs. 49,700 reflected a deep link between them. Over and above Mr. Wadhwa agreed for relodging of the returned cheque instead of demanding reimbursement from Mr. Jain. In this manner, certainly they jeopardised the interest of the Bank.

The amount of the interest charged is a poor consolation as compared with the safety of the funds, which is a permanent factor.

Mr. Jain was working as a clerk and it was not the part and parcel of his duty to do such jobs and incur unnecessary risk until and unless he was induced by his personal interest and motive. The more I deal with this case, more and more the dummy personality of the Branch Manager was emerging who was acting in such an irresponsible manner. Not only Mr. Jain took undue advantage when the Branch manager was in service but made a full use his absence. In these circumstances to say that it was in knowledge of the Branch Manager does not help much.

In defence past practices and instances have been cited. I can see that these past instances were as reprehensible as present one. According to Mr. Jain funds of the Bank were left with an employee of R.B.I. who was not accountable to Central Bank in any manner. It was wrong on the part of Mr. Gupta to hold the nationalised Bank's funds unauthorisedly when he was working in R.B.I., if it is based on factual position, this practice was fraught with risk.

I could understand the demand of new currency notes by the villagers, but it does not appeal to me that they were crazy about the specific series of notes and to satisfy their demand the Branch Manager risked the Bank's funds.

In these circumstances, first and the paramount step for any Branch Manager was to debit the party's account irrespectively of balance available. None of other staff members had mentioned about the row."

The above observations of the enquiry officer in the enquiry report speak for themselves and I have no hesitation in holding that the findings of the Enquiry Officer are perverse.

15. In view of the discussion made above the Domestic Enquiry against the workman is held to be vitiated. The question now arises as to whether it will serve any purpose to further allow the Management opportunity to prove the charges before this Tribunal. The workman was suspended

on 20-6-75. He was discharged from service on 28-3-77 after a prolonged enquiry. There were protracted proceedings before this Tribunal and the matter has come to the conclusion after a lapse of nearly 8 years. If a fresh trial is initiated for proving the charges in this Tribunal, it would veritably amount to a denial of justice. The charges against the workman are based on documentary evidence. A look at the charges levelled against the workman reveals that there is no allegation of any defalcation of accounts and the bank has not suffered any financial loss in real terms. The charges at best amount to connivance in the misuse of bank funds for a short period by a third party in the case of the first charge and misusing the funds of the bank for a short period from 10-5-75 to 22-5-75 in the case of the second charge and for the period from 15-4-74 to 24-5-74 in the case of the third charges. The evidence of all the three charges is in the shape of documents about which there is no dispute. Hence the charges can be determined on the basis of the documentary evidence on the record itself. A close look at the evidence and the enquiry proceedings and the findings of the enquiry officer leads to the conclusion that it is not the workman who was directly responsible for all these misconducts but the then Branch Manager incharge of the branch who failed to exercise, whether deliberately or inadvertently, proper control over the functioning of the branch. It was really the function of the branch manager to see that the cheque for Rs. 73634.64 p. received on 22-3-75 was debited to the account of the party concerned but he failed to exercise proper control with the result that the cheque was not debited to the account till 3-5-75. However on 6-5-75 the branch manager took the full amount alongwith 5 per cent commission in cash in his custody and had the pay order issued on that date. All the same the workman cannot be fully absolved of his involvement in this charge because he did prepare the pay order unauthorisedly a portion of which was subsequently torn off. Similarly with respect to the second charge, it is the branch manager who allowed over draft facility to the extent of Rs. 50,000 to the workman. Once this facility had been allowed to the workman, he was within his right to utilise that facility. In fact the cheque which was encashed by the workman as overdraft was passed and cleared by the Branch Manager. Where then is the fault of the workman. If the Management had any objection to the allowing of overdraft facility to the workman who was only a clerk, it should have taken suitable steps to get the overdraft facility withdrawn and if there was any misuse of authority, action should have been taken against the branch manager. The third charge relates to a paltry amount of Rs. 3500 which was given to the workman for obtaining new currency notes from the R.B.I. The workman has explained that the staff of the R.B.I. took considerable time in supply the new currency notes. He had in fact left the money with the official of the R.B.I. and he could not get the R.B.I. to collect the money as he otherwise got busy with his house work. He has also explained that such delay in the supply of new currency notes was the normal feature at that time. Even if all the charges are taken on their face value, the punishment of discharge from service is totally disproportionate to the gravity of offence. Taking an overall view of the entire facts and circumstances of this case, it is directed that the workman shall be reinstated with the continuity of service but with 50 per cent back wages. Further the first three increments falling due after termination may be withheld with cumulative effect and thereafter increments may be allowed to him and his pay fixed accordingly. This reference stands disposed of accordingly.

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Government for necessary action at their end.

9th February, 1989.

[No. L-12012/93/80-D.II(A)]

G. S. KALRA, Presiding Officer

नई दिल्ली, 21 मार्च, 1989

का. प्र. 661—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूची में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, बम्बई के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-3-89 को प्राप्त हुआ था।

New Delhi, the 21st March, 1989

S.O. 661.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the Canara Bank and their workmen, which was received by the Central Government on the 14th March '89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

Reference No. CGIT-2/19 of 1987

PARTIES :

Employer in relation to the management of Canara Bank.

AND

Their Workman

APPEARANCES :

For the Employer—Shri Mahesh Amonkar, Advocate.

For the Workman—Shri Subhas Naik Jorge, Secretary, Goa Bank Employees Association.

2. Shri N. S. Kolgaonkar (workman).

INDUSTRY : Banks

STATE : Goa

Bombay, dated the 28th February, 1989

AWARD

The Central Government by their Order No. L-12012/146/86-D.II(A) dated 13-3-1987 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.—

"Whether the action of the management of Canara Bank, Mangalore in discharging Shri N. S. Kolgaonkar, sub-Staff, Santacruz Goa Branch, from service of the Bank w.e.f. 13-3-1985 is justified? If not, to what relief is the workman entitled?"

2. The dispute in question has been raised by the workman Shri N. S. Kolgaonkar himself, and not by any Union on his behalf. The case of the said workman as disclosed from his statement of claim (Ex. 2/W) in short is thus :—

He was appointed as a Peon in the Canara Bank at its Santacruz, Goa Branch on 11-10-1979. On 15-6-1983 the Santacruz Branch entrusted him with the work of getting encashed two British Postal Orders for Pound 10 each drawn in favour of post officer Santacruz, Goa. He collected the cash proceeds of these two postal orders amounting to Rs. 309.80 on the next day from the Post Office. On his way back, he lost the money which he had kept in his purse. He came from a poor family, and as such he could not arrange for the amount from his house to deposit in the Bank. He also did not inform the Bank about the loss of the amount due to fear of any disciplinary action being taken against him. He hoped that he would be able to borrow the amount from some other person, and would deposit in the Bank. He did not attend to his duty from 13-7-1983 to 27-12-1983, as he was sick, and his Doctor had advised him to take rest. He submitted the necessary medical certificate and the leave application to

the Bank in that respect. He resumed duty on 28-12-1983. He credited the amount of Rs. 309.80 in the Bank on 30-12-83 after borrowing it from his friend.

(ii) However on 3-1-1984 the Bank issued a charge-sheet dated 27-12-83 against him and also suspended him from service with effect from 27-12-1983. The Bank alleged against him that he had misused the official position in the Bank, unauthorisedly detained the proceeds of the British Postal Order, and misappropriated the amount of Rs. 309.80, which was the amount of the Bank. It was further alleged that he had committed gross misconduct as per clause (j) and (m) of Regulation 3 under Chapter XI of Canara Bank Service Code. He submitted his reply to the charges. Thereafter, the Accountant Shri B. V. Janardhan was appointed as the Enquiry Officer by the Bank management. During the enquiry proceedings, the said workman was not represented by any representative. The said Enquiry Officer did not explain to him the procedure of the enquiry. At the outset, the Enquiry Officer examined him in the presence of Bank witness. He, i.e. the workman admitted the charges levelled against him without knowing its true effect, as he had already admitted certain facts in his reply letter dated 13-1-1984. The Enquiry Officer thereafter examined the Bank witness, namely, Shri A. M. Pai, Branch Manager. The workman was not given any opportunity to cross-examine that witness. He was also not given any opportunity to lead any evidence in his behalf. No copy of the documents produced on behalf of the Bank, were given to the workman for perusal.

(iii) Thereafter the enquiry Officer submitted his findings on 6-11-1984. The said findings of the Enquiry Officer are perverse. He proposed the punishment of stoppage of four increments to the workman. The Dy. General Manager of the Bank accepted the findings of the Enquiry Officer but enhanced the punishment to his discharge from service. Thereafter the services of the workman were terminated with effect from 13-3-1985. Thereafter he filed an appeal against the said order to the Executive Committee, Board of Directors of the Bank at Bangalore. The Appellate authority, however, by its order dated 20-11-1985 dismissed his appeal. Thereafter the workman raised an industrial dispute with the Assistant Labour Commissioner (C), Vasco de Gama. As the conciliation proceedings failed the Central Government referred the industrial dispute, as above, to this Tribunal.

3. The workman then further alleged thus:—

The termination of his service is illegal and unjustified. The service conditions of the workmen in Canara Bank as well as all other nationalised banks are governed by the Sastry Award, Desai Award, and Bipartite Settlements which have been signed between the Indian Banks Association of which Canara Bank is a member, and All India Bank Employees Association of which Canara Bank Employees Union is a member. Therefore, the workman in Canara Bank are not governed by the Canara Bank Service Code as the same is outdated and is not in full conformity with the provisions of the Bipartite Settlements. Therefore, the action taken as per the said Code, is not justified legal. Further, while inflicting the punishment on him, the Bank Management did not consider his past record and did not take into consideration the extenuating circumstances of the workman before awarding the punishment. Therefore, even assuming that he was guilty of the charges levelled against him, the punishment of discharge passed against him, is too severe and disproportionate to the charges levelled. Therefore, the workman lastly prayed that the said order of discharge passed against him by the Bank Management, be set aside and he be reinstated in service with full back wages and continuity of service. In the alternative, in case it is found that he is guilty of the charges

levelled against him, then the punishment of discharge from service inflicted upon him be set aside, and a punishment which is proportionate and reformatory in the nature be inflicted upon him.

4. The Assistant General Manager, Canara Bank Mangalore by his written statement (Ex. 11/M) resisted the claim of the workman denied the allegations made by him in the claim statement, and in substance contended thus :—

While the said workman was working as Peon at the Santacruz, Goa Branch he misappropriated the Bank's amount of Rs. 309.80. On 15-6-1983 he was entrusted with two postal orders for the value of Pound 10 each for collection from the local Post Office. The said workman encashed the Postal Orders on 16-6-1983 but did not remit the value of the said Postal Orders to the Bank. Since 13-7-1983 the workman stopped attending the Bank. The Bank thereafter made enquiries in the said Post Office regarding the collection of the amount of the said Postal Orders. The Bank was informed by the Postal authorities that those two Postal Orders were encashed from the Post Office by the said workman on 16-6-1983. Thereafter a show cause notice was issued to the said workman on 24-8-1983 by the Bank to show cause why disciplinary action should not be taken against him for the misappropriation of the said amounts. That show cause notice was returned back by the Postal authorities with the remark that the workman was not available. Thereafter one more show cause notice was issued to him, on 8-10-1983. Thereafter, a chargesheet was issued against him on 27-12-1983. He was charged with the act of misappropriation and unauthorisedly detaining the proceeds of the two postal orders and for remaining absent from duty from 13-7-1983. He was placed under suspension from 27-12-1983. The workman replied to the said charge-sheet by his letter dated 13-1-1984. He admitted therein that he collected the value of the said two Postal Orders, but contended that his purse containing the said amount was lost. However, the plea of the workman was found not true and correct. He further stated in his reply that as he was ashamed to tell the Bank about the loss of the amount he remained absent. The Bank was not satisfied with the said explanation, and hence it took steps to hold the necessary enquiry against him. Shri B. V. Janardan, Accountant, Circle Office, Mangalore, was appointed as the Enquiry Officer. The workman participated in that enquiry. In that enquiry the workman admitted all the charges levelled against him. That enquiry was held properly and the rules of natural justice were followed. He was given every opportunity to defend himself. The Enquiry Officer thereafter proposed the punishment of stoppage of four increments of the workman. However, the Disciplinary authority, in view of the seriousness of the misconduct of discharge of the workman as per Chapter XI, Regulation 4(h) of Canara Bank Service Code. The workmen of Canara Bank are governed by the provisions of Canara Bank Service Code, which is framed in consonance with provisions of Sastry Award, Desai Award and the subsequent Bipartite Settlements. At the time of joining the Bank, he had executed a service agreement under which he has agreed to abide by the provisions of Canara Bank Service Code. While inflicting the punishment upon the workman, the Disciplinary authority had taken into consideration all extenuating circumstances including the past record of the workman.

(ii) The Bank further contended in the written statement that in the Appeal filed by the workman before the Appellate Authority, he had regretted for the lapse on his part and he requested for a lesser punishment.

4. The Bank lastly contended that the action taken by it in the matter of discharge of the said workman, was quite just and legal, and deserves no interference by this Tribunal.

5. On the above pleadings, the following Issues were framed (Ex. 12):—

1. Whether the enquiry held against the workman Shri N. S. Kolgaonkar, by the Enquiry Officer was not held properly, and the rules of natural justice were not followed?
2. Whether the punishment of discharge from service is disproportionate with the guilt of the workman, if any?
3. Whether the action of the management of Canara Bank, Manager, in discharging Shri N. S. Kolgaonkar, sub-staff, Santa Cruz, Goa Branch, from service of the Bank w.e.f. 13-3-85 is justified?
4. If not, to what relief is the workman entitled?
5. What Award.
6. My findings on the above Issue are :—

1. The enquiry was held properly and the principles of natural justice followed.
2. Yes.
3. Not justified.
4. As per the Award.
5. —do—

REASONS

7. In this case the workman Shri N. S. Kolgaonkar filed his affidavit (Ex. 13/W) in support of his contentions and he was cross-examined on behalf of the management (Ex. 14/W). The Enquiry Officer Shri B. V. Janardhan, filed his affidavit (Ex. 15/M) in support of the contentions of the Bank Management, and he was cross-examined on behalf of the said workman (Ex. 16/M). No more oral evidence was led on behalf of the parties. The main contention of the workman is that the Enquiry Officer did not hold the enquiry properly and the principles of natural justice were not followed, he was not given any opportunity to defend himself, and the said enquiry is bad in law. However, it will be seen from the original enquiry papers (Ex. 17/M) that there is absolutely no substance in the said contentions of the workman. It will be seen from the letter dated 9-5-1984 sent by the said Enquiry Officer to the workman that, in that letter the Enquiry Officer had told the workman to remain present for the enquiry in the Bank premises at Santa Cruz, Goa, on 24-5-1984, and that he might produce such evidence oral or written, as he might desire to produce, and it was further told that if so desired he (i.e., the workman) would be permitted to be defended by any other employee of the Bank or by a representative of a Registered Union of Bank Employees. The Enquiry papers regarding the enquiry held on 24-5-1984 disclose thus:—

The Enquiry Officer had asked the workman whether he had received the charge-sheet and gone through the charge-sheet and understood its contents. He replied that he had gone through the contents of the charge-sheet, and he understood them. The next question asked to him was, whether he admitted the charges, and he replied that he admitted all the charges. He was further asked whether he admitted the charges unconditionally, and he replied that he admitted all the charges unconditionally. The charges against the workman in substance were that he had committed misappropriation in respect of the said two Postal Orders and the other charges as stated earlier above.

- (ii) After the workman admitted the charges as above, the Branch Manager Shri A. M. Pai, was examined on behalf of the management. He deposed about the incident in question. After his statement was over, the Enquiry Officer had asked the workman whether he wanted to say anything about the said evidence of the Bank Manager, and the workman replied, "I am very sorry sir. I will never do this type of mistakes in future. I am the only earning member of the family and I am also the eldest son in the family. All the family members including father and mother are dependent on me. I may kindly be given an opportunity to correct myself, and I once

again assure the Bank that I will not commit such mistakes in future". On the adjourned date, the Enquiry Officer told the workman about the proposed punishment of stoppage of four increments. The workman thereafter replied that, "the proposed punishment of stoppage of four increments is going to be very severe if the same is imposed upon me. I, therefore, earnestly request that the punishment be reduced to at least "stoppage of two increments". I would like to once again assure the Bank that I will not repeat such instances of misappropriation in future".

It is thus clear from the above said enquiry proceedings that the enquiry was held properly after following the principles of natural justice, and the workman was given every opportunity to defend himself. He had himself admitted the charges levelled against him and had admitted the truth of the evidence of the management witness examined against him.

8. It was urged on behalf of the workman that even though there was the necessity of a fulfilled enquiry before his discharge from service, no fulfilled enquiry was conducted against him. As noted above, firstly a show cause notice was issued to him regarding the proposed punishment by the Enquiry Officer, and thereafter a charge-sheet was issued, and thereafter a witness for the management i.e., the Branch Manager, Shri Pai, was examined on behalf of the management. As noted above, the workman himself admitted the material facts and the material charges against him at several stages of the enquiry proceedings. It is an admitted fact that he did not deposit the encashed amount till 30-12-1983 and that he had also remained absent from 13-7-1983 to 27-12-1983. Therefore, as the workman admitted the material charges against him and as the management witness was examined on behalf of the management, it was unnecessary for the Enquiry Officer to proceed further in the matter and record evidence of some other witnesses against the workman. It was further urged on behalf of the workman that the Enquiry Officer did not examine the workman himself, and that he should have examined him, however as the workman had admitted the material against him, I find that it was unnecessary that the workman should have been examined by the Enquiry Officer. At the time of arguments it was conceded by the workman that the Canara Bank Service code is consistent with the provisions of Sastri and Desai Award and the different Bipartite Settlements. I, therefore, find that proper enquiry, wherein reasonable opportunity to defend himself was given to the workman, was held in the present case, and the principles of natural justice were followed in the matter. After the Enquiry Officer submitted his report, the workman was heard on the point of punishment. The Disciplinary Authority passed the order of discharge against the workman disagreeing with the proposal of the Enquiry Officer that four increments of the workman be stopped. The workman filed an appeal against the order of the Disciplinary Authority to the Executive Committee, Board of Directors, Canara Bank, on 26-4-1985 (Ex. 9/W). In that appeal also he admitted certain facts, and stated that "I sincerely regret for the lapses on my part. I humbly appeal to you to review the decision to discharge me from the services of the bank and retain me in the service of the Bank with lesser punishment." Thus he clearly admitted that he was found guilty of the misconduct on his part and prayed for a lesser punishment. I, therefore, find that proper enquiry, as contemplated under the Canara Bank Service Code, was held against the workman.

9. It was urged on behalf of the workman that the findings of the Enquiry Officer are not proper, and are perverse, and he did not record his findings on all the issues. I find that the findings of the Enquiry Officer are proper and are not perverse in any way. It will be seen from the last para of the Enquiry Report (Ex. 6/W) dated 6-11-1984 that he had recorded the findings that he found the charge-sheeted employee guilty of the charges as contained in the charge sheet. Thus he had recorded findings on all the charges framed against the workman. For the above said reasons I find that the enquiry held against the workman by the Enquiry Officer was held properly, and the principles of natural justice were followed, Issue No. 1 is answered accordingly.

Issues Nos. 2, 3 and 4

10. According to the workman, the punishment of discharge from service passed by the disciplinary authority and the Appellate authority, is disproportionate with the guilt of the workman, if any. I also find that this punishment is too severe as compared to the misconduct committed by the workman. Admittedly the workman was entrusted with two postal orders on 15-6-1983 and that he encashed the Postal Orders for Rs. 309.80 on 16-6-1983 but did not credit the amount into the Bank till 30-12-1983. Further he admitted that he had not informed any of the Bank Officers about the non-deposit of the amount till 30-12-1983, and he remained absent from 13-7-1983 to 27-12-1983. Assuming for the sake of argument that the workman had lost his purse containing the said amount while returning from the Post Office on 16-6-1983, he should have informed that Bank about it immediately. Not disclosing the said fact speaks against the normal conduct of an ordinary person. In my opinion, he had temporarily misappropriated the said amount for more than six months. The non-depositing of the amount in the Bank for a period of six months or more and remaining absent for more than five months, itself amounts to gross-misconduct on the part of the workman as contemplated in clause 3(m) of the Canara Bank Service Code. Non-depositing of the amount immediately in the Bank amounts to negligence involving or likely to involve the Bank is serious loss, and further doing any act, which was prejudicial to the interests of the Bank.

11. Even then, in my opinion, the said punishment is disproportionate to the said misconduct on the part of the workman. While imposing any punishment, past record of the workman is to be seen. It seems that the past record of the workman was not considered in the present case. He was in service of the Bank for about four years prior to the encashment of the said Postal Orders. It is not the case of the management that the workman had a bad record. As such, it must be presumed that his past record was normal. Therefore, he should not have been discharged from service. The Enquiry Officer had proposed the punishment of stoppage of four increments. Now, in my opinion, the punishment to be imposed upon him, and the relief to be granted under Section 11-A of the Industrial Disputes Act, is that he should be reinstated in service without back wages but with continuity of service. Therefore, the loss of wages of four years would be the sufficient punishment to him in the matter. Therefore, for the said reasons, my findings on Issue No. 2 is in the affirmative, while Issue No. 3 is in the negative and the finding on Issue No. 4 is as per the Award below.

Issue No. 5

12. Hence the following award is passed.

AWARD

The action of the management of Canara Bank, Mangalore, in discharging Shri N. S. Kolgaonkar, sub-staff from the service of the Bank with effect from 13-3-1985 is hereby set aside. The said management is hereby directed to reinstate the workman in service within two months from the date of publication of this Award in the Government of India Gazettee without back wages but with continuity of service. The parties to bear their own costs of this reference.

Sd/-

P. D. APSHANKAR, Presiding Officer
[No. L-12012/146/86-D.II(A)]

का. आ. 662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार हलाहबाद बैंक के प्रबंधन के संदर्भ नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-3-89 को प्राप्त हुआ था।

S.O. 662.—In pursuance of section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government on the 13th March, 1989.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD****PRESENT:**

Reference No. 299 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

PARTIES :

Employers in relation to the management of Allahabad Bank and their workmen.

APPEARANCES :

On behalf of the workmen : Shri Sunil Kumar Tiwary, General Secretary, Bihar State Allahabad Bank Emp. Union.

On behalf of the employers : Shri Shrikant, Law Officer.

STATE : Bihar.**INDUSTRY :** Banking.

Dated, Dhanbad, the 3rd March, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/530/86-D.II(A), dated, the 25th November, 1987.

SCHEDULE

"Whether the action of the management of Allahabad Bank in terminating the services of Shri Kamlesh Kumar Choudhary, Sweeper Rajendra Nagar Branch w.e.f. 3-5-1986 and also not paying the authorised scale of pay of part-time sweeper for the periods 1983-84, 85 and 86 is justified? If not, to what relief the workman concerned is entitled?"

The case of the workmen is that the concerned workman Shri Kamlesh Kumar Choudhary was working as part-time Sweeper in Rajender Nagar Branch of Allahabad Bank as and when any vacancy occurred due to the absence of the permanent full-time Sweeper Shri N. K. Mandal in the year 1988 to 1985. The concerned workman is a member of the Scheduled Caste community and is Passi by caste, Shri N. K. Mandal, Sweeper who was working in Rajender Nagar branch was in the habit of leaving the branch

even without giving any prior intimation to the authorities concerned which was effecting the work at the branch office. As such the Branch Manager being pleased with the honest working of the concerned workman asked the concerned workman to furnish caste certificate and other testimonials for his appointment as temporary part time Sweeper which was subsequently to be made permanent when vacancy occurs. The concerned workman submitted his caste certificate etc. to the Branch Manager as per his direction. He started working as part time Sweeper with effect from 22-4-87. Shri N.K. Mandal permanent full time Sweeper of Rajender Nagar Branch of the Bank was transferred on 16-1-1985 to the Patna University branch of the Bank. Thereafter the post of permanent full time sweeper became vacant at Rajender Nagar branch and the concerned workman started working on the said post. As the concerned workman was working in the permanent vacancy of Sweeper the management of the Bank did not post any person to fill the post which was lying vacant due to transfer of Shri Mandal.

The concerned workman joined the Bihar State Allahabad Bank Employees Union from the month of June, 1985. When he was working as permanent full time Sweeper in the Bank he started receiving threat and pressure to join the rival union which is the management's sponsored trade union. The concerned workman refused to join the rival union. Thereafter on 6-5-86 one Ran Vijay Prasad filed a complaint before the Branch Manager with a threat that the concerned workman is being used by the Bank for the work which are not supposed to be performed by him. It was also stated in the said letter that inspite of the objection by Ran Vijay Prasad, the branch Manager asserted that he will take those works from the concerned workman. The members of the rival union started putting pressure over the Branch Manager and under their pressure from 8-5-1986 the signature of the concerned workman was not obtained on the payment voucher and the sweeping charge was drawn by the manager himself and payments were being made to the concerned workman at Rs. 8 per day. The concerned workman became apprehensive from the action of the Branch Manager and therefore he filed a petition dated 22-5-1986 to the higher management through the Branch Manager wherein he alleged that the rival union is putting pressure on him to join their union otherwise they will get him replaced. The concerned workman further requested that his claim for appointment on the permanent post may be considered and he submitted the photo copies of caste certificate educational certificate and employment exchange registration card although he had submitted its original certificates at the time of his appointment. On receipt of the said letter the Branch Manager became furious over him and reduced his wages from Rs. 8 to Rs. 4 per day. The concerned workman requested the Branch Manager to make him the proper payment of wages but his request was turned down. The concerned workman tried to hand over the petition on 25-5-1986 as a mark of protest against the reduced payment of his wages by the Branch Manager but the Branch Manager refused to accept it and thereafter the concerned

workman sent the petition under registered cover to the Regional Manager on 26-5-1986. When the concerned workman failed to get justice the union of the concerned workman raised an industrial dispute on 12-6-86 before the ALC(C) Patna. The ALC(C) started conciliation proceeding in which the management appeared but the conciliation failed and thereafter the present reference was made to this Tribunal for adjudication.

The question of absorption of the temporary employee to fill the permanent vacancy in the bank is considered in para 20.8 of the first bipartite settlement wherein it has been agreed that the period of 90 days shall be the outer limit for the appointment of temporary employees, beyond which he has a right to be selected to fill the permanent vacancy. The concerned man was working as temporary Sweeper even in the year 1983 and 1984 but with effect from 22-4-85 he started working as temporary Sweeper and after transfer of Shri N.K. Mandal permanent Sweeper on promotion the concerned workman started working against the permanent post with effect from 17-1-1986 till the date of the termination of his services with effect from 3-5-1986 which exceeded 3 months period of his working in the permanent vacancy. After the transfer of Shri Shri N.K. Mandal on 16-1-1986 no person was sent to fill the permanent post of Sweeper at Rajender Nagar Branch till the termination of services of the concerned workman on 3-5-1986. Although the concerned workman was working as part time Sweeper he was engaged throughout the working hours at the branch. After expiry of the period of first partite settlement another settlement was entered into on 12-10-70 on their issue of wages structure. In clause 9(b) of the settlement it was agreed that the part time workman who have worked for 29 hours a week shall be entitled for full scale wage. The said clause has not been amended in the subsequent settlement. The concerned workman was never paid the full scale wage of Sweeper by the management at any point of time. The termination of the services of the concerned workman without giving any opportunity to show-cause and without passing any formal order of termination from service was by way of victimisation and amounts to unfair labour practice on behalf of the management. The concerned workman has all the requisite qualification for being appointed as a Sweeper in the Bank. On the above facts it is prayed that the management be directed to reinstate the concerned workman with effect from 3-5-1986 and to hold that the non-payment of authorised scale of pay to him was unjustified, and the management be directed to pay all consequential relief to the concerned workman.

The case of the management is that there was a permanent employee working as Sweeper at their Rajender Nagar branch and as such there was no question of engaging the concerned workman against permanent vacancy. The concerned workman however was engaged temporarily for certain number of days against leave and/or any other type of absence by the permanent incumbent. The temporary engagement of the concerned workman was resorted to only when the Bank could not provide a relieving hand to the Rajender Nagar branch. The Bank has about 8 branches in Patna and relieving

arrangement at all the times in all the branches could not be practicable as in the employees of Sweeper category in the urban area the incidence of absence was erratic and frequent. No person named as Kamlesh Kumar choudhury had worked at Rajender Nagar Branch as Sweeper. However, one Kamlesh Kumar had worked for a limited number of days i.e. for 134 days in leave vacancy during the span of 4 years till 3-5-86 with many breaks at Rajender Nagar Branch. The Bank took proper measure so that engagement of temporary sweeper should be avoided completely with effect from 3-5-86. As per norms of the Bank vide its circular dated 10-4-85 for engagement/employment to permanent Sweeper post on 1½ wages in terms of clause 2(b) the persons should belong to SC/ST community and sweeping class. As per certificate submitted by the concerned workman Shri Kamlesh Kumar choudhury is Passi by caste which is not a sweeper class as certified by the Scheduled Caste/Scheduled Tribe commissioner, Patna vide their letter dated 25-9-86. The concerned workman was engaged on consolidated wages on different dates. The stoppage of the employment of the concerned workman is matter of non-renewal of contract under Section 2(cc)(bb) of the I.D. Act. The claim of the concerned workman is devoid of any truth and he is not entitled to any relief. It is prayed on behalf of the management that it be held that the action of the management for non renewal of contract of the concerned workman with effect from 3-5-86 and paying him consolidated wages for the job of part time sweeper is wholly justified and he is not entitled to any relief.

The points to be considered in this case are (1) whether the termination of the services of the concerned workman as Sweeper in Rajender Nagar Branch with effect from 3-5-86 is justified (2) whether the non-payment of the authorised scale of pay of part time Sweeper for the period 1983 to 1985 and 1986 is justified.

The management has examined three witnesses to prove their case. The union did not examine any witness. However, the documents of the workmen have been marked Ext. W-1 to W-11 and the documents of the management have been marked Ext. M-1 to M-17.

Point No. 1

It is the admitted case of the parties that the concerned workman was working as a Sweeper in Rajender Nagar branch of Allahabad Bank. Ext. M-3 is an extract to show the date on which the concerned workman had worked as a Sweeper in Rajender Nagar Branch of the Bank. It shows that the concerned workman had started working for the first time on 17-10-83 and had worked upto 31-5-86. On adding the number of days worked by the concerned workman in the branch it appears that in all he had worked for 135 days between 17-10-83 to 3-5-86. Obviously the concerned workman was engaged from time to time and it was not a regular and continuous employment of the concerned workman. It is stated by the workmen in para-2 of the W.S. itself that the concerned workman was working as a Sweeper in Rajender Nagar branch as and when vacancy occurred

due to the absence of the permanent full time Sweeper Shri N. K. Mandal in the year 1983 to 1985. It is undisputed therefore that the concerned workman had occasionally worked as Sweeper during the years 1983 to 1985 whenever any vacancy occurred due to the absence of the permanent full time Sweeper.

It is stated in para-4 of the W.S. of the workman that the concerned workman submitted his caste certificate etc. to the Branch Manager and thereafter he started working as part time Sweeper with effect from 22-4-85. On perusal of Ext. M-3, which is an undisputed document it will appear that the engagement of the concerned workman was not regular from 22-4-85. It appears that after 22-4-85 he had worked for 8 days in April, 4 days in May, 4 days in June and 3 days in November, 1985. Thus it cannot be said that the concerned workman was working regularly and continuously as Sweeper with effect from 22-4-85 to 23-11-85. However it appears that from 19-1-86 to 3-5-86 he was regularly engaged as Sweeper except on Sundays and holidays. This was the period when admittedly the full time permanent Sweeper Shri N. K. Mandal was transferred on 16-1-86 from Rajender Nagar branch to the Patna university branch. It appears that the concerned workman had worked for more than 3 months from 16-1-86 to 3-5-86.

It is stated in para-17 of the W.S. of the workmen that the question of absorption of the temporary employee to fill the permanent vacancy in the bank has been considered in para 20.8 of the first Bipartite settlement. I will first refer to para 20.7 of the first Bipartite settlement which shows that temporary employee means a workman who has been appointed for a limited period for work which is of essentially temporary in nature..... and includes the workman other than permanent workman who is appointed in temporary vacancy caused by the absence of a particular permanent workmen. Thus according to this definition of temporary employee it will appear that the concerned workman who had worked in the temporary vacancy caused by the transfer of the permanent sweeper Shri N. K. Mandal was only a temporary employee and cannot be said to become permanent employee of the bank. Para 20.8 provides that a temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment was not exceeding a period of 3 months during which the Bank shall make arrangement for filling up the vacancy permanently and if such a temporary workman is eventually selected for filling up the vacancy the period of such temporary employee will be taken into account as part of his probationary period. Para 20.8 nowhere states that a person who has temporarily worked in the permanent vacancy will automatically become permanent employee if he has worked for 3 months or more in the said vacancy. It only state that a temporary workman may also be appointed to fill a permanent vacancy and the appointment of such person should not exceed the period of 3 months and during that period the management of the Bank should make arrangement for filling up the permanent vacancy. However, an advantage is given to the temporary employee who has worked in the permanent vacancy

caused for about 3 months and if he is selected for filling up the said vacancy, the period of his work during the said vacancy will be taken into account as part of his probationary period. Thus although the concerned workman appears to have worked for more than 3 months after the transfer of N. K. Mandal, he does not get a right to be automatically made permanent in the said vacancy. His character still remains of a temporary employee. There is no evidence on the record to show that the management has yet made any permanent arrangement in the vacancy caused by the transfer of Shri Mandal. Thus para 20.8 as interpreted in para 17 of the W.8 of the workman does not, according to me, appear to be a correct interpretation of the paragraph.

Ext. M-1 is a circular dated 10-4-85 in respect of filling up the vacancy of Sweeper on permanent part time/full time basis. Para 2(a) provides that the promotion to the post of full time sweeper shall be made on the basis of stationwise seniority, without inviting applications amongst the Sweepers on 3/4th pay basis. In absence of Sweepers on 3/4th pay basis in that station, sweeper working on 1/2 pay basis shall be considered for the post of full time Sweeper. In absence of Sweeper of 1/2 pay basis, Sweeper of 1/3rd pay basis in the station shall be considered for promotion to the post of full time Sweeper and if even 1/3rd pay basis Sweeper is not available within the station then Sweeper working on a consolidated pay within the station shall be considered for promotion to the above post in the said station as per requirement, on the basis of stationwise seniority. It also provides that identical procedure is to be followed for filling up the post of permanent part time Sweeper. Para 2(b) provides that in case the Sweeper working on consolidated pay are considered on the basis of station-wise seniority for filling up of the post of higher wages in the cadre of sweeper as stated in clause 2(a), they have to fulfil the terms and conditions as follows :—

- (1) He should belong to SC/ST community and Sweeping class.
- (2) He must produce the documentary evidence in case of date of birth and educational qualification if any.
- (3) He must be below matriculation.
- (4) He must produce the employment exchange card from the Local Employment Exchange.
- (5) He must be medically fit.

From the above it will appear that there are different categories of Sweepers namely :—

- (1) Full time Sweeper,
- (2) Sweeper on 3/4th pay basis,
- (3) Sweeper on 1/2 pay basis,
- (4) Sweeper on 1/3rd pay basis, and
- (5) Sweeper on consolidated pay.

The case of the management is that the concerned workman was engaged temporarily for short period

on contractual/consolidated pay basis. It is admitted by the workmen that the concerned workman was getting wages @ Rs. 8/- per day. Ext. M-2 shows that prior to January, 1986 the concerned workman was paid wages @ Rs. 5/- per day of his work and since January, 1986 he was being paid @ Rs. 8/- per day. This rate of payment made to the concerned workman was neither on 1/3rd, 1/2 or 3/4th pay basis of the scale of pay of the Sweeper. MW-1 is working as Personnel Officer in the Patna Zonal Office of Allahabad Bank and looking after the personnel matters. He has stated that the concerned workman was working as part time Sweeper on temporary basis and he used to be engaged only when there was leave vacancy/sick vacancy and any casual work was required. He has further stated that the concerned workman was paid contractual consolidated wages for the work done by him and that the concerned workman was never engaged for the full day. It is clear from his evidence therefore that the concerned workman was working as Sweeper and his engagement was not on 1/3rd, 1/2 or 3/4th pay basis of the pay scale of the Sweepers.

Admittedly vacancy of permanent Sweeper occurred after the transfer of Shri N. K. Mandal from 16-1-86 and there is no evidence on the record to show if the said vacancy has been filled up by any permanent Sweeper. It will appear from the facts of the case of the parties that Rajender Nagar branch of the Bank had a sanctioned post of only one permanent sweeper and there was no post of Sweeper on 3/4th, 1/2 or 1/3rd pay basis. It also appears that the concerned workman had worked only in case of absence or transfer of the permanent Sweeper from Rajender Nagar branch. According to the circular Ext. M-1 a Sweeper who has worked on consolidated pay basis is to be considered for promotion to the post of permanent Sweeper caused due to the transfer of Shri N. K. Mandal. There is no other Sweeper of any category working in Rajender Nagar branch at the relevant time except the concerned workman.

The concerned workman has filed a certificate Ext. W-1 issued by the Block Development Officer, Patna Sadar dated 22-1-86 to show that Kamlesh Kumar Choudhary S/o. Sukhdev Choudhary of Purbi Lohanipur, Kadamkuan Patna is a Harijan and of Passi caste. The fact that the concerned workman belongs to a scheduled caste is challenged by the management and for that purpose MW-3 Shri P.N. Gupta, Block Welfare Officer of Sadar Block Patna has been examined. He has stated that he had investigated and had learnt from different persons that there was no person belonging to Passi caste named Kamlesh Kumar Choudhary in East Lohanipur. He has further stated that no further enquiry he learnt that there was one Sukhdev Mandal having a Tea shop who has a son named Kamlesh Kumar working in a Bank. He met Sukhdev Mandal and from him he learnt that Sukhdev Mandal belongs to village Teriwani, Dumra, Distt. Sitamarahi and the Sukhdev Mandal is not Passi by caste and is Dhanuk by caste and therefore his title is Mandal. After making enquiry he submitted his report Ext. W-12 to the B.D.O. Sadar Patna and thereafter Shri Sidheswar Pd. Sinha,

he submitted his report Ext. W-12 Pd. Singha, B.D.O. Patna gave his report Ext. M-14. Ext. M-15 is the Admission Register of School. Sl. No. 101 shows that one Kamlesh Kumar Son of Sukhdev Mandal was admitted in the School on 25-5-77 and that Sukhdev Mandal was doing the business of shopkeeper in Purbi Lohanipur. Ext. M-16 is the Attendance Register of the school in which the attendance and the name of Kamlesh Kumar is stated in Sl. No. 4. Ext. M-17 is the mark obtained by Kamlesh Kumar when he passed class VIII in 1981. Ext. M-7 is a petition filed by the concerned workman himself on 24-12-88 when the case was being heard. He has stated that in the year 1981 he passed class VIII from Rajkiya Vanita Bihar Balak Madhya Vidyalaya and he got himself admitted in Class IX in P. N. Anglo Sanskrit Vidyalaya, Patna as there was no Class IX in Rajkiya Vanita Bihar Balak Madhya Vidyalaya. He has stated that the school certificate Ext. M-7 filed by the management is forged and that he had not filed it. He has stated that he has filed the transfer certificate in P.N. Anglo Sanskrit School at the time of admission and that in the school his name was Kamlesh Kumar but the certificate filed by the management bears the name of Kamlesh Kumar Choudhary. Ext. W-9 is the Affidavit of the concerned workman in which he has stated that he had read in Rajkiya Vanita Bihar Balak Madhya Vidyalaya from 1977 to 1981 and had obtained the certificate of class VIII from the said school in 1981 in which his date of birth was 15-3-69. The concerned workman did not file the said certificate as stated by him. Ext. W-8 is the certificate dated 2-1-89 by MW-2 Shri Ramrup Pd. Singh, Headmaster of Rajkiya Vanita Bihar Madhya Vidyalaya. He has stated that there was no student named Kamlesh Kumar Choudhary in his school and there was one student named Kamlesh Kumar s/o. Sukhdev Mandal. He has produced the admission Register to show that there was no student named Kamlesh Kumar Choudhary admitted in his school. Ext. W-10 is another petition filed by the concerned workman dated 13-1-89 before his union. He has come out with a new story in this petition. It will appear from the facts stated in Ext. W-10 that the Sasural of his father is at Tirmari Dumra and that the name of his grand father is Anogi Mandal. He has further stated that his Nana Zulum Mandal belonging to village Teriwani Dumra, P.S. Belsand, District Sitamarhi was not his real "Nana". He has stated that his mother Sanjha Devi is not the own daughter of Zulum Mandal and that when Sanjha Devi was a small child she was found weeping in the Manibazar from where Zulum Mandal out of compassion brought her at his house and reared her and when she grew up she was married to the father of the concerned workman. He has further stated that nobody knew the whereabouts of his mother and that she herself had disclosed after her marriage that she was Passi by caste. There is no such statement in the written statement of the workman nor he has come forward to say so on oath before me and it appears that when it was not possible to explain that

the concerned workman was Passi by caste he manoeuvred the story woven out in Ext. W-10. The concerned workman has produced Ext. W-1 in which even Sukhdeo Mandal has been described as Sukhdeo Choudhury although he was not Passi by caste. The concerned workman did not produce the certificate which he had received from his school showing that he was given the certificate describing him as Kamlesh Kumar Choudhury son of Sukhdeo Choudhury. The evidence of MW-3 that Sukhdeo Mandal had told him that he belonged to the village Teriwani finds some support from the facts stated in Ext. W-10 which connects Sukhdeo Mandal and shows that Sukhdev Mandal had his Sasural at Teriwani, Dumra. The date of birth of the concerned workman as stated in Ext. M-5 does not tally with the age of the concerned workman given in Ext. W-11. The title "Choudhury" added in the name of Kamlesh Kumar and his father Sukhdeo in Ext. W-11 is also not supported by Ext. M-15. From all the evidence discussed above it appears doubtful that the concerned workman is Passi by caste and as such he does not appear to be of scheduled caste community. It will further appear from the evidence discussed above that the concerned workman had worked in the vacancy caused on the transfer of Shri N. K. Mandal and that he was being paid wages on consolidated contractual basis. There is no evidence to show that the concerned workman had worked either on 3/4th, 1/2 or 1/3rd pay basis of a Sweeper in the Bank. He had only worked on a consolidated pay basis which was admittedly less than 1/3rd pay scale of a Sweeper in the Bank. The management had therefore right to terminate his services but when considering to fill up the vacancy of Sweeper in Rajender Nagar Branch of the Bank the case of the concerned workman has to be considered to fill up the said vacancy in accordance with the circular Ext. M-1 dated 10-4-85. The concerned workman has right to be considered for filling up the post of the permanent Sweeper in Rajender Nagar Branch of the Bank as there is no Sweeper of any other category working in the said branch. The management of course has to consider and see whether the concerned workman is fulfilling the terms and conditions as laid down under para 2(b) of Ext. M-1 and the concerned workman also has to establish before the management if he is fulfilling the terms and conditions laid down therein. As the concerned workman was working on a consolidated contractual day to day pay basis the management had a right to terminate his services and not to renew the contract of employment of the concerned workman. In the above view of the matter it has to be held that the termination of the services of the concerned workman as Sweeper in Rajender Nagar Branch with effect from 3-5-86 is justified.

Point No. 2

I have discussed in detail above regarding the different categories of Sweepers engaged in the service of the Bank. I have also held above that the concerned workman was working on consolidated pay on day to day basis. There is no evidence

that the concerned workman was engaged as a Sweeper on the pay basis of 3|4th, 1|2 or 1|3rd scale of pay of Sweepers and therefore he is not entitled to the scale of pay of Sweeper either on 3|4th, 1|2 or 1|3rd pay basis. The evidence is clear that the concerned workman had been appointed on consolidated contractual basis and that he had received the said contractual wages. The concerned workman at no stage protested against the payment of wages till a few days prior to the stoppage of his work. There is absolutely no evidence to show that the concerned workman was employed as Sweeper on any of the authorised scale of pay of part time Sweeper for any of the period between 1983 to 1986. The concerned workman did not examine himself in the case to show that he was appointed on any of the authorised scale of pay of part time Sweeper, or that the facts as stated in his petition Ext.W-10 are correct. I hold therefore that the management is justified in not paying the authorised scale of pay of part time Sweeper to the concerned workman for the period 1983 to 1986.

In the result, I hold that the action of the management of Allahabad Bank in terminating the services of the concerned workman Kamlesh Kumar Choudhury, Sweeper Rajender Nagar Branch with effect from 3-5-86 and not paying him the authorised pay scale of part time Sweeper for the period 1983 to 1986 is justified and accordingly the concerned workman is not entitled to any relief except that the management may consider his case for appointment to the post of permanent Sweeper in Rajender Nagar Branch of Allahabad Bank in accordance with circular Ext.M-1 dated 10-4-85.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-12012|530|86-D-II(A)]

का. प्रा. 663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार युनाइटेड बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोक्ता और उनके कर्मचारों के बीच, अन्तर्वंश में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-3-89 को प्राप्त हुआ था।

S.O. 663.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the United Bank of India and their workmen which was received by the Central Government on the 14th March, 1989.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Wednesday, the 1st day of March, 1989

INDUSTRIAL DISPUTE NO. 26 OF 1987

(In the matter of the Dispute for adjudication under Section 10(1)(d) of the Industrial

Disputes Act, 1947 between the workmen and the Management of United Bank of India, Madras-4.)

BETWEEN

The workman represented by

The President,
Tamil Nadu Banks Deposit Collectors Union,
55, Armenian Street,
P.O. Box 180, Madras-600 001.

AND

The Regional Manager,
United Bank of India,
59, Katcheri Road,
Mylapore,
Madras-600 004.

REFERENCE :

Order No. L-12012|120|86-D-II(A), dated 9-3-87 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 12th day of October, 1988 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru U.P. Shet, Authorised Representative appearing for the workman and of Thiru S. Vaidyanathan for Thiruvalluvar Row and Reddy, Advocate appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This dispute between the workmen and the Management of United Bank of India, Madras-4 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its order No. L-12012|120|86-D-II(A), dated 9-3-87 of the Ministry of Labour for adjudication of the following issue :

“Whether the action of the Management of the United Bank of India, Madras in terminating the services of Shri Koshy Kettikaran, Tiny Deposit Collector, United Bank of India, Oppanakara Street, Coimbatore from 20-12-1984 is legal? If not, to what relief is the workman concerned entitled?”

2. The averments in the claim statement are one Koshy Kettikaran was selected and appointed as Commission Agent by the Respondent Bank at Coimbatore Branch under the Tiny Saving Scheme on 28-11-79 stipulating certain terms and conditions. As per the terms the Deposit Collector collected the deposits under Tiny Savings Account by moving door to door daily, weekly or fortnightly or monthly and after collecting the deposits he should issue printed coupons supplied by the bank to the value of the deposit collected and collected amounts will have to be deposited with the bank's branch on the same day or

next working day along with the copy of the coupon. The appointee will be paid by the bank under the Commission of 3 per cent deposit collected during the month payable in the week of the subsequent month. He is also required to furnish 2 sureties against any claim. The workman accepted the terms and conditions for employment and was working at the Oppanakkara Street for the Respondent. While so the services were terminated by the Bank on 20-12-84, the Management—Bank had issued identity card and also supplied with coupons of various denominations by the Bank to issue the same to the customers on receipt of cash. The workman should also attend the branch of the Respondent Bank and submit all statement of collection on deposit and also should sign the statement of collection prepared by him. The petitioner states, the petitioner was the regular employee of the Bank as the Agent for collection of cash towards Tiny Deposit Savings Accounts. The designation "Commission Agent" has no relation to the work of collecting cash at the doors of the customers of the Bank under the deposit scheme. The workman was not given regular pay scales but only a lumpsum wages at 3 per cent of the total cash collection made by him and therefore his remuneration varied with the collection of cash amounts. This commission which is nothing but the wages of the workman, cannot fall within the meaning of "Commission" as defined in the Banking Regulation Act, 1949. While so the service was terminated without any reasons on 20-12-84 and that he was drawing a monthly remuneration not less than Rs. 800 at that time. The Petitioner was at the regular permanent service of the Bank with the designation as "Commission Agent". He performed the duty of cashier by collecting cash from the doors of the customers of the Respondent Bank as per the rules of deposit. The termination of his service amounts to retrenchment as defined under Section 2(oo) of the I.D. Act, 1947. Hence the claim for reinstatement, back-wages and other compensation.

3. The Respondent in his counter states that the reference is incompetent since the petitioner was not a workman as defined under Section 2(s) of the Industrial Disputes Act. He was only a "Commission Agent" under the Tiny Savings Scheme by receiving a commission at the rate of 3 per cent on deposit collected. The order of appointment states that he is not an employee of the Bank and that he had no claim in the Bank under any circumstances. He was not required to attend the Bank nor sign the Attendance Register. He was not subject to the Discipline or control of the Bank. The provisions of the Bipartite Settlement applicable to Bank employees are not applicable to him. He was only required to deposit the collections on the same day or the next day. Issuing an identity card, it will not make him a workman of the Bank. He had to only call on the Bank to deposit the collections and he was not subject to any other control. Commission Agents were engaged not only in this Bank, but in several other Banks. In Complaint No. 1182 and I.D. 20/83 this Tribunal has held that the Tiny Deposit Collectors are not workmen under Section 10 of the Banking Regulation Act, 1949. A Banking company is prohibited from employing any person on the basis of any remuneration by way of commission. Hence, the petitioner is

working as a 'Commission Agent'. The main object of the scheme was to mobilise deposits from Low Income Group and inculcate a savings habit in their minds. The working of the scheme did not produce any desirable results at the Coimbatore Branch but had only posed various problems to the Officers. The Reserve Bank also took a policy act to encourage the scheme any further. The Head Office of the Respondent also sent a circular on 1-12-1983 not to extend the Scheme to new branches. The Commission Agents demanded miscellaneous coupons with the prior signatures of the Officer in blank or higher denomination coupons of Rs. 100 to Rs. 500. The Bank while refusing the scheme, they started demonstration and shouting vulgar slogans in front of the Bank. Since there was no relationship of Master and Servant and he was purely a Commission Agent, no reason need to be assigned for terminating his services. He was not a workman as defined under Section 2(s) of the I.D. Act. Question does not arise. The provision relating to Section 2(oo) also will not apply. The reference is incompetent. Hence the claim is to be dismissed.

4. The point for determination is :

"Whether the termination of Koshy Kettikaran, Tiny Deposit Collector is legal? If so, to what relief the workman concerned is entitled to?"

5. In this case W-1 to W-13 on the side of workman and M-1 to M-9 on the side of the Management were marked. No oral evidence was adduced on either side.

6. The facts in this case that Koshykettikaran was appointed as a Commission Agent by the Respondent—Bank at Coimbatore Branch under Tiny Deposit Savings Scheme by W-1 corresponding to M-1 are not disputed. The order of appointment W-1 containing the terms and conditions and also designation of the person as 'Commission Agent' is also not in dispute. The Petitioner filed W-2, W-10 various documents relating to correspondence with the Bank like execution, surety, advertisement, failure of conciliation report, Tiny savings account opening form and form of settlement of collection of deposits. While so according to the petitioner though he has been designated as 'Commission Agent' he is a regular employee. In other words the commission agent according to the Petitioner—Union is a workman under I.D. Act and therefore he cannot be retrenched. On the other hand the Respondent—Bank relying on M-1, M-4 would contend that the appointment of Koshykettikaran was only as a commission agent for limited purposes. As per the terms and conditions of order of appointment, since services were not required, he was terminated under M-4. It is also the contention of the Respondent that he is not a workman and there is no relationship of Master and Servant and therefore Section 2(oo) also would not apply. In other words, he being a commission agent, he can claim it any time. Now in the light of the contentions raised by the parties, the question arises whether the petitioner was a workman as defined under Section 2(s) of the I.D. Act, 1947 so as to attract the other provisions namely Section 2(oo). In this connection, a

perusal of M-1 the order of appointment letter itself would be a clinching document to decide the issue. The learned authorised representative contends that though the petitioner has been designated as a commission agent, the nature of job done by him is that of cashier, collecting cash. On that score he is an employee of the Bank. The further contention is the savings scheme is a business of the Respondent—Bank for which they form Rules and Regulations. The scheme is to mop-up the deposits from the public, in particular, from the poorer section of people and such deposits are invested by the respondent—bank and earn profits. This nature of work, according to the learned authorised representative is that the tiny savings scheme like any other savings scheme by the bank, is the business of the Bank and the Petitioner who was doing such business by going to depositors, collecting the amounts and coming to the bank daily and depositing the same would only amount to that the petitioner is also an employee of the Bank. In this connection, a perusal of M-1 would go a long way to dispel the contention of the petitioner union. In M-1, it has been stated the applicant has been selected for being engaged as the Bank's Commission Agent under Tiny Savings Scheme with the terms and conditions mentioned therein. This order of appointment refers to 11 conditions. Condition No. 2 states "he will not be an employee of the Bank in any sense whatsoever." Condition No. 9 states, "he will be paid by the Bank, commission at the rate of 3 per cent of the deposit collected by him during the month payable in the first week of the subsequent month". Condition No. 10 relates that the period of engagement as Commission Agent will initially be for 6 months from the date of taking up the assignment and this may be renewed by the Bank on the basis of his overall performance. He will however, has no claim to an appointment in the Bank, in any circumstances whatsoever. Condition No. 11 states, he will be required to furnish two sureties to the bank to stand surety for him against any claim the Bank may bear on him. These conditions according to the management would disclose that the petitioner has not been appointed by the Bank as an employee. A perusal of M-1 with the above conditions would only disclose that at no time the petitioner was appointed as an employee and he has no such right in future. It is further seen that he will not be entitled to any pay or remuneration as in the case of regular employee. But he would be entitled to only 3 per cent of commission for the deposit collected by him during the month. It is not the case of the petitioner—workman that as agent of the Tiny Deposit Scheme has to attend the office regularly and submit vouchers, etc. and also perform any other work in the branch as directed by the Branch Manager. In the absence of any evidence on this aspect, the following conclusions can be drawn namely that there is no regular attendance for deposit collectors as regular employees, there are no fixed hours of work, there is no provision for grant of leave either casual or earned or medical, to deposit collectors. They are also not eligible for any other allowances or any pensionary gratuity benefits. Further the deposit collectors cannot be transferred from one branch to another branch. The bank has no control over activities of deposit collectors and

the only obligation is to remit the collections into the bank and for that purpose they would go to the bank. In fact the deposit collector is paid remuneration by way of commission depending on the collection made by him. The adverse of these factors in the case of deposit collector would make him not an employee of the Bank. In fact Section 10 of the Banking Regulation Act, 1949, prohibits the banking company from employing any person whose remuneration or part of remuneration takes the form of commissions or shares in the profit of the company. The Bank is not permitted to appoint the person on the payment of commission on a contract otherwise than the regular member of the company.

7. In the face of Section 10(1)(B) of the Banking Regulation Act, 1949, it is impossible to conceive that the respondent had an intention or authority to appoint Deposit Collector as an employee of the Bank. Incidentally it is seen from M-2 and M-3 the reports submitted by the Respondent Branch Office, Coimbatore to the Regional Manager, Southern Region disclosing the hardship in continuing the system of Tiny Deposit Scheme and suggested to discontinue the scheme. A perusal of M-2 and M-3 would also show the handicap in the scheme and practical hardship to the public as well as the banks.

8. It is seen, Section 2(s) of the Industrial Disputes Act defines, "workmen in wide terms namely including apprentice, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment express or implied.....". Though it is urged by the petitioner on the basis of the wide definition that deposit collector is a workman, it cannot be accepted for the reason, firstly, he has been appointed only as a Commission Agent; secondly, he is not eligible to get benefits that would accrue to regular employee of the bank; thirdly he is not controlled by the bank; fourthly he has no fixed time of work and he is not bound to attend the bank daily. He attends the bank only for the purpose of depositing the deposits collected by him. The above facts would only lead to the irresistible conclusion that the petitioner cannot be termed as workman by any stretch of imagination. There cannot be any relationship of master and servant. It is open to the bank to terminate the agency. Since the petitioner is not a workman, the question of retrenchment also does not arise, warranting to apply Section 2(cc) of the Industrial Disputes Act, 1947.

9. For these reasons, this reference is incompetent and the termination of the services of Koshykettikaran, Tiny Savings Collector, by the Respondent-Branch is legal. This point is found against the Petitioner-Union.

10. In the result an award is passed justifying the action of Management and rejecting the claim

of the Union. The Petitioner will not be entitled to any relief. No cost.

Dated, this 1st day of March, 1989.

Sd/-

K. NATARAJAN, Presiding Officer

[No. L-12012/120/86-D.II(A)]

N. K. VERMA, Desk Officer

WITNESSES EXAMINED :

For both sides : None.

DOCUMENTS MARKED :

For workman

Ex.W-1/28-11-79—Letter of appointment to Thiru Koshykettikaran, engaging as Banks Commission Agent under Tiny Savings Scheme. (Xerox copy)

Ex. W-2/12-11-81—Notice of the Advocate Thiru S. Manoharan withdrawing of the sureties by Thiru George Kettikaran. (Xerox copy)

Ex. W-3/11-10-84—Letter from Management Bank, Coimbatore demanding fresh surety bond by two sureties. (Xerox copy)

Ex. W-4/12-10-84—Notice to public in "Malai Murasu" informing suspension of the Petitioner workman. (Xerox copy)

Ex. W-5/17-10-84—Letter by Tvl. K. Ravindran & C. G. Radhakrishnan willing to execute fresh surety bond (Xerox copy)

Ex. W-6/20-12-84—Letter of the Management Bank, Coimbatore terminating the services of the workmen (Xerox copy)

Ex. W-7/1-1-85—Notice to Public in 'Malai Murasu' informing termination of services of the workmen. (Xerox copy)

Ex. 8/14-3-86—Conciliation Failure Report (Xerox copy)

Ex. W-9/14-3-86—Tiny Savings Account Opening form of the Bank (Xerox copy)

Ex. W-10/14-9-86—Form of Statement of collection of deposit. (Xerox copy)

Ex. W-11/14-3-86—Rules of business relating to Tiny Savings Scheme. (Xerox copy)

Ex. W-12/14-3-86—Rules relating to collection of deposits, containing in the pass book of the depositors. (Xerox copy)

Ex. W-13/14-3-86—Tamil Pamphlet-reference to "Commission Agent". (Xerox copy)

For management :

Ex. M-1/28-11-79—Letter of Appointment to Thiru Koshy Kettikaran, engaging as

Banks Commission Agent under Tiny Savings Scheme. (Xerox copy)

Ex. M-2/11-9-84—Report from the Manager, United Bank of India Coimbatore Branch to Regional Office. (Xerox copy)

Ex. M-3/30-4-85—Confidential report from the Manager, United Bank of India, Coimbatore Branch to Regional Office. (Xerox copy)

Ex. M-4/20-12-84—Letter of the Management Bank, Coimbatore terminating the services of the workman. (Xerox copy)

Ex. M-5/20-1-87—Copy of Award of Central Government, Industrial Tribunal, Jaipur. (Xerox copy)

Ex. M-6/24-4-85—Copy of Award of Central Government Industrial Tribunal, Jabulpore. (Xerox copy)

Ex. M-7/26-2-86—Copy of the notification of Award of the Central Government Industrial Tribunal, Kanpur, relating to termination of a Deposit Collector. (Xerox copy)

Ex. M-8/18-1-85—Copy of the Industrial Tribunal, Madras in I.D. 20/83. (Xerox copy)

Ex. M-9/18-1-85—Copy of the Industrial Tribunal, Madras in C. No. 1/82. (Xerox copy)

Sd/-

K. NATARAJAN, Industrial Tribunal

नई दिल्ली, 23 फरवरी, 1989

का. अ. 664—कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) की धारा 16 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए और मामले की परिस्थितियों को ध्यान में रखते हुए, केन्द्रीय सरकार की राय है कि ऐसा करना समीचीन है "सोसाइटी रजिस्ट्रेशन अधिनियम, 1960 के अन्तर्गत या किसी भी राज्य में इस समय लागू किसी अन्य कानून के तहत पंजीकृत और कुछ उन्मूलन कार्यक्रम में लगे स्वैच्छिक संरक्षकों" के वर्ग को इस अधिसूचना के सरकारी राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए उपर्युक्त अधिनियम के प्रवर्तन से छूट देने है।

[सं. एम.-35612/11/88-एम. एम.-II]

ए. टी. अश्वरुथी, प्रधान सचिव

New Delhi, the 23rd February, 1989

S.O. 664.—In exercise of the powers conferred by sub-section (2) of section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government, after having regard to the circumstances of the case, is of the opinion that it is expedient to do, hereby exempts "voluntary organisations registered under the Societies Registration Act, 1860 or any other law for the time being in force in any State and engaged in leprosy eradication programme" as a class, from the operation of

the said Act for a period of three years with effect from the date of publication of this notification in the Official Gazette.

[No. 305/12/11/88-SS. II]

A. K. BHATTARAI, Under Secy.

नई दिल्ली, 15 मार्च, 1989

का. घा. 665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयर इंडिया, नई दिल्ली के प्रबंध तंत्र से संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-1981 को प्राप्त हुआ था।

New Delhi, the 15th March, 1989

S.O. 665.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Air India, New Delhi and their workmen which was received by the Central Government on the 10-3-89.

ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL,

NEW DELHI

I.D. No. 9/86

In the matter of dispute between :
Moti Lal son of Sanwal Ram
r/o 16/726-H Bapa Nagar, Military Road,
New Delhi.

Versus

Personnel Manager, Air India,
Himalaya House, Kasturba Gandhi Marg,
New Delhi.

APPEARANCES :

Workman in person.—With Sh. Vijay Jaiswal Advocate.
Shri K. B. Swamy—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-11012(5)/85-D.II(B) dated 6-12-1985 has referred the following industrial dispute to this Tribunal for adjudication.

“Whether the termination of services of Shri Moti Lal by the management of Air India from 20-1-76 is legal and justified? If not to what relief the workman is entitled?”

2. The case of the workman as set forth in the statement of claim is that he joined service with the Air India as a Loader w.e.f. 23-5-74 on daily wages @ Rs. 8.50 per day and he continued to work with the Management till 19-1-76 when his services were terminated without any reason. It has been alleged that the workman demanded from the Management that his services may be made permanent and his salary fixed according to the regular grade and the Management got annoyed with this demand and for this reason his services were terminated. He served a demand notice dated 3-1-83 but the Management did not care to reply to the same. Then he served another notice dated 19-3-1983 to which also no reply was given. Thereafter he raised the dispute before the conciliation officer before whom the Management gave assurance that the workman will be compensated and he will be reinstated but later on the Management refused to reinstate him but offered to pay him compensation of about Rs. 4000 or Rs. 5000. In these

circumstances it is alleged that termination of the services of the workman is illegal, unjustified, unfair, unconstitutional and it has been played that the Management may be directed to make payment of compensation and other dues including full back wages and he may be reinstated in service.

3. The Management in its written statement submitted that the claim of the workman suffers from laches as it has been made after a lapse of about 10 years. It has further been pleaded that the workman was engaged purely on a temporary and casual and daily wages basis and was engaged according to exigencies of the extra temporary load and after the extra work was over there was no question of further retention of the workman. The Management denied that it had made any offer before the conciliation officer to reinstate the workman or to pay him any compensation. It denied that the termination of the applicant is illegal, unjustified, unfair or unconstitutional and justified, its action is legal and valid.

4. There is considerable merit in the plea of the Management that the case of the workman suffers from laches. According to the workman himself his services were terminated w.e.f. 19-1-76. The present order of reference was made only on 6-1-1986. The earliest representation by the workman was made through demand notice on 3-1-83 which was followed by a registered legal notice dated 18-3-83. No explanation whatsoever has been furnished by the workman in his statement of claim regarding this inordinate delay in raising the present dispute. It is only in his affidavit that he stated that he had been meeting the Management almost once in a week during the years 1976 to 1981. This averment is purely an after thought and is unacceptable. This inordinate delay in raising the dispute indicates that the workman was not seriously interested in serving the Management and that he has raised the dispute only for pecuniary advantage by the abuse of the conciliation machinery and the process of court. If the workman was seriously interested in serving the Management even after his alleged termination, he should have raised the dispute soon after his termination and in any case within at the most six months or one year. As has been pointed out earlier the first representation was made in the form of demand notice only on 3-1-83 i.e. after a lapse of about 7 years. There is a well known maximum of equity that delay defeats equity or equity aids the vigilant. The Hon'ble Supreme Court of India has in a number of cases held the delay of even 1 to 1-1/2 years as unreasonable and that aggrieved person should reach the court within six months or one year. In the authority P. S. Sadasivaswamy Versus State of Tamil Nadu AIR 1974 Supreme Court 2271 it was held as under :—

“A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for the relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed *in limine*. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”

Similarly in the authority cited as Pattan Lal Vs. Union of India and others 1987 (2) SLR 343 it was held by the Central Administrative Tribunal, Gauhati as under :

“6. More than anything else, the claims must be regarded as stale. Although impugned documents are of 1965 and the cause of action for grievance if any arose then. In respect of such unduly delayed ser-

vice matters we would be inclined to be guided by the Supreme Court decisions in *P. S. Sadasivswamy vs. State of Tamil Nadu*, S.C. 1974 page 227."

5. The result of this inordinate delay is that while the workman has not been able to produce any evidence for his continuous employment for a period of one year before the date of his termination 19th January, 1976, the Management witness MW 1 Shri S. M. Puri has stated that the case being very old the record is not available and they are unable to verify the number of working days put in by the workman. The workman has placed on record a photo copy of identity card Ex. W-1 issued in his favour on 17th June, 1975 valid upto 16th June, 1976. On the basis of this Identity Card the Id. representative of the workman tried to make out a case of continuous employment of the workman but nothing could be farther from the truth. As per his own admission the workman was employed as a loader on daily wages. MW 1 Shri S. M. Puri has stated in no uncertain terms that the casual loaders are appointed to cater to the variable nature of work in accordance with the exigencies of work and such type of employment is only intermittent in nature. This explanation is quite convincing and acceptable. The workman also has admitted that the Identity Card had been issued by the International Airport Authority of India and that the Identity Cards were issued to enable the individual to work at the Airport and that an individual cannot enter the Airport without Identity Card. It is, therefore, manifest that the Identity Card was issued to the workman to facilitate his entry into the Airport and it will in no way go to show that he worked continuously for the period of validity of the Identity Card. Under these circumstances it is not possible to determine whether or not the workman had actually worked for a continuous period of one year as defined under section 25-B of the I.D. Act in order for him to have sailed into the protection of section 25-F and it is not also possible to hold that the Management is guilty of violation of the provisions of section 25-F of the I.D. Act, and the fault entirely lies with the workman because of the inordinate delay in raising the dispute. Hence the claim of the workman is liable to be rejected on the short ground of laches.

6. In view of the above discussion the workman is not entitled to any relief and this reference is disposed of accordingly.

28th February, 1989.

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Government for necessary action at their end.

28th February, 1989.

G. S. KALRA, Presiding Officer
[No. L-11012/5/85-D. II(B)/III(B)]

नई दिल्ली, 17 मार्च, 1989

का. आ. 666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार सोलंकी शिपिंग एजेंसी, बम्बई के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, सं. 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-3-89 को प्राप्त हुआ था।

New Delhi, the 17th March, 1989

S.O. 666.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Solanki Shipping Agency, Bombay and their workmen, which was received by the Central Government on the 14th March, 1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

Reference No. CGIT-2/41 of 1987

PARTIES :

Employers in relation to the Management of Solanki Shipping Agency, Bombay,

AND

Their Workmen.

APPEARANCES :

For the Employers—No appearance.

For the Workmen—Shri S. R. Wagh, Advocate.

INDUSTRY : Ports and Docks.

STATE : Maharashtra.

Bombay, dated the 3rd March, 1989

AWARD

The Central Government by their Order No. L-31012/2/87-D. IV(A) dated 24th August, 1987 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

"Whether the action of the management of M/s. Solanki Shipping Agency, Bombay, a Custom House Clearing and Forwarding Agents operating in the major port of Bombay, in terminating the services of Shri E. B. Raymond, Custom and Dock Clerk, w.e.f. 1st July, 1984 is justified? If not, to what relief the workman concerned is entitled?"

2. The case of the workman Shri E. B. Raymond, as disclosed in the statement of claim (Ex. 2/W), filed by the Transport and Dock Workers' Union, Bombay, in short, is thus :—

The workman Shri E. B. Raymond, Custom and Dock Clerk was in the service of M/s. Solanki Shipping Agency since 1st April, 1981. This company is doing business as a Custom House Clearing and Forwarding Agent, operating in the Major Port at Bombay. The workman as usual came to the office to report for duty on 1st July, 1984. However, the proprietor of the Company Shri Narottam Bhai Solanki orally told him to go out of the office. No reason was given for the termination of his service. He was neither paid any retrenchment compensation, nor any wages in lieu of notice and the other retrenchment benefits, and also other legal dues. While he was in service of the company for four years before the termination of his service he had a clean record. He started service at the wages of Rs. 500 per month, and his pay at the time of termination of his service was Rs. 975 per month. After the termination of his service the workman made representation to the Company, but no heed was given to it. Thereafter the Union raised an industrial dispute with the Assistant Labour Commissioner (C), Bombay for the reinstatement of the workman. As the Conciliation proceedings failed, the Central Government made the reference, as above. The Union, therefore, prayed for the reinstatement of the workman with full back wages and continuity of service.

3. The notice of the present reference was duly served upon the other side i.e. The Proprietor, M/s. Solanki Shipping Agency, Bombay. Though, several adjournments were given to the Employers to file their written statement, no written statement was in fact filed by it. While this reference was received by this Tribunal on 1-9-1987, the representative of the management for the first time appeared on 26-5-1988 and prayed for time to put in their written statement. Thereafter he again appeared before the Court on 23-8-1988 and on some other adjourned dates, when permission was granted to put in their written statement. On 18-1-1989 the Proprietor of the said Company filed an application requesting for time to put in Written statement. On hearing the other side, this Tribunal passed an order that on payment of Rs. 100 as

costs to the workman, the management was allowed to put in their written statement. In spite of this order, on the adjourned date no written statement was put in by the management. Only a peon from the company by name Shri M. B. Gomale appeared before the Tribunal, but did not put in any written statement, and as such, the reference proceeded ex-parte against the said company.

4. The Issues framed at Ex. 3 are :—

- (1) Whether the termination of the service of the workman by M/s. Solanki Shipping Agency, Bombay w.e.f. 1-7-1984 is just and proper ?
- (2) Whether the termination of the service of the said workman without holding any domestic inquiry against him, was just and proper ?
- (3) Whether the workman is entitled to reinstatement in service ?
- (4) To what other reliefs, if any, he is entitled ?
- (5) What Award ?

5. My findings on the said Issues are :—

- (1) No
- (2) No
- (3) Yes
- (4) As per award
- (5) As per award.

REASONS

ISSUE NOS. 1 and 2

6. The workman, Shri E. B. Raymond, filed his affidavit (Ex. 4) in support of his statement of claim. As noted above, the said company has not put in any written statement in this case. As such, in the absence of anything contrary on record, there is nothing to disbelieve any of the statements made by the workman in his affidavit. According to him, at the time of termination of his service, no retrenchment compensation or any wages in lieu of notice, were paid to him. Further, in case the workman was to be discharged or dismissed for any fault on his part, departmental enquiry must be held, but no enquiry was held in the matter. He was also not paid any retrenchment compensation before his services were terminated. Hence Issue Nos. 1 and 2 are found in the negative.

ISSUE NOS. 3 and 5

7. Therefore, the workman is entitled to reinstatement in service with all back wages and continuity of service. Issues Nos. 3 to 5 are answered accordingly. In the result, the following award is passed.

AWARD

The action of the management of M/s. Solanki Shipping Agency, Bombay, a Custom House Clearing and Forwarding Agents operating in the major Port of Bombay in terminating the services of Shri E. B. Raymond, Custom and Dock Clerk, w.e.f. 1-7-1984 is not justified. The management of the said company is hereby directed to reinstate the workman Shri E. B. Raymond in service within two months from the date of publication of this Award with full back wages and continuity of service.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

[No. L-31012/2/87-D. IV(A)/III(B)]

नं. मा. ०८७—औद्योगिक विवाद विधानसम, १९४७ (१९४७)
क. १४) की धारा १७ के अनुसार से, केन्द्रीय सरकार एयर इंडिया, मद्रास

के प्रबंधक से संवत् नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को १४-३-१९८९ को प्राप्त हुआ था।

S.O. 667.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Air India, Madras and their workmen, which was received by the Central Government on the 14-3-89.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU, MADRAS

Monday, the 27th day of February, 1989

PRESENT :

Thiru K. Natarajan, M.A., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 79 of 1988

In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of Air India, Madras-600008.)

BETWEEN

The workmen represented by

The Regional Secretary, Air Corporation Employees Union, Air India Region, C/o Engineering Department, Menambakkan Air Port, Madras-600027.

AND

The Regional Director, Air India, No. 8, Montith Road, Madras-600008.

REFERENCE :

Order No. L. 11012/17/87-O.II(B) | D.III(B) dated 17-11-88 of Ministry of Labour, Government of India, New Delhi.

This dispute coming on this day for final disposal in the residence of Tvl. N. Krishnamurthy, V. V. Krishnamoorthy and T. R. Ramamoorthy, Advocates appearing for the Management upon perusing the reference and other connected papers on record and the workmen being absent, this Tribunal passed the following award.

AWARD

This dispute between the workman and the Management of Air India, Madras arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in the order No. L. 11012/17/87-D. II(B) | D.III(B), dated 17-11-88 of the Ministry of Labour for adjudication of the following issue :

"Whether the management of Air India, Southern Region, Madras is justified in denying transfer allowance to Shri V. Kumar, Senior Office Assistant on his being promoted as Assistant Administrative Officer and posted at Bombay and whether the Management is justified in withdrawing the offer of promotion as Assistant Administrative Officer of Shri V. Kumar. If not, what relief the workman is entitled to ?"

2. Parties were served with summons for the hearing on 23-1-89.

3. On 23-1-89, the Management was represented by counsel. Petitioner-Union was absent and no representation was made on behalf of Union. Then case was adjourned to 13-2-89 for filing claim statement. On that day also no representation was made for Petitioner-Union and no claim statement was filed.

4. Today also when the dispute was called, Petitioner was absent. No representation was made though case was passed over till 11-15 A.M. Claim statement was also not filed.

5. Hence Industrial Dispute is dismissed for default. An award is passed accordingly.

Dated, this 27th day of February, 1989.

K. NATRAJAN, Industrial Tribunal
[No. L 11012/17/87-D. II(B)/III(B)]

V. K. SHARMA, Desk Officer

नई दिल्ली, 17 मार्च, 1989

का. भा. 668.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ़ मैसूर के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10 मार्च, 1989 को प्राप्त हुआ था।

New Delhi, the 17th March, 1989

S.O. 668.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Tamil Nadu as shown in the Annexure, in the management of State Bank of Mysore and their workmen, which was received by the Central Government on the 10th March, 1989.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, MADRAS

Wednesday, the 22nd day of February, 1989

PRESENT :

Thiru K. Natrajan, M.A., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 16 OF 1986

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of State Bank of Mysore, Bangalore.)

BETWEEN

The workmen represented by

The Secretary, State Bank of Mysore Employees' Union,
231, NSC, Bose Road, Madras-600061.

AND

The Zonal Manager, Bangalore Mofussil, Head Office,
State Bank of Mysore, Kempagowda Road, Banga-
lore-560009.

REFERENCE :

Order No. L-12012/75-D. II(A), dated 14-2-1986 of the Ministry of Labour, Government of India, New Delhi

This dispute coming on for final hearing on Tuesday, the 25th day of October, 1988 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru N. G. R. Prasad for Thiruvallargal Row and Reddy and V. Prakash, Advocates appearing for the workmen and of Thiruvallargal R. Sreekrishnan, G. Hariharan and R. Prabhakar, Advocates for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following Award.

AWARD

This dispute between the workmen and the Management of State Bank of Mysore, Bangalore arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L. 12012/75/85-D. II(A), dated 14-2-1986 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the Management of State Bank of Mysore, Bangalore in denying the supervisory scale of pay to S/Shri V. R. Veeraraghavan and K. R. Srinivasan, Electricians-cum-Caretakers, State Bank of Mysore, Madras with effect from 1973 is justified? If not to what relief the workmen are entitled to?"

1. The Petitioner's averments are that the Petitioner-Union is a Trade Union registered under the Trade Unions Act in which majority of the employees of the Respondent-Bank including the two aggrieved employees are members. The Respondent is a Nationalised Bank. Thiruvallargal V. R. Veeraraghavan and K. R. Srinivasan holding a diploma in Electrical Engineering with Electrical 'C' licence issued by the Madras Electricity Board have been appointed in the Respondent-Bank on 15-4-1971 and 16-4-1971 respectively as Electrician-cum-Caretaker. They were furnished with a list of duties and responsibilities as per the appointment order. They are to be incharge of electrical installations, lift etc., general supervision and maintenance of building repairs, water supply, storage and distribution, sanitary installations, Flushing and plumbing and drainage systems, general sanitation of the entire building, general assistance to the Manager with regard to work connected with the maintenance of building premises etc., Liaison with the Corporation, Electricity Board for reference connected with the building maintenance, liaison work with any department of Corporation, State Government connected with the premises and any other duties that may be entrusted to them from time to time. They were also given additional duties subsequently namely, (i) Security department work of holding the keys of bank premises, duty arrangement for the temporary and part time watchman; (ii) Liaison work of arranging booking of accommodation for rail/air travels and hotel accommodation of various officials of the Respondent Bank and arranging for vehicles/cars for their visits and other related work; (iii) Stationery Department work like arranging, supply of uniforms for rooms, binding of ledgers and other works like arranging for maintenance of typewriters, adding machines, calculators etc., (iv) Correspondence work with G.P.O. for renewal of postage, post box, postal franking machine, telegram abbreviation etc. and (v) other general work like preparations of vouchers and cheques for all the purchases made and looking after correspondence relating to the above items of work. In other Nationalised Banks like Indian Bank, State Bank of India whose employees possessing the same qualifications as that of Thiruvallargal Veeraraghavan and Srinivasan and doing the same work are given salary applicable to a Junior Management Officer. While in the other Nationalised Banks treated Electricians-cum-Caretaker as Supervisory staff, the Respondent Bank which is also a Nationalised Bank gave only salary of a clerk to those two employees. The Supreme Court decision held that there should be equal pay for equal work. The two employees are doing mainly supervisory work and they should have been given salary applicable to a supervisory staff, namely, Junior Management scale of Rs. 350/950 (applicable since 1971 and revised to Rs. 700/1800 subsequently). But they were given only clerical scale when their work was hardly clerical. The designation of the employee is not decisive, what determines the status is a consideration of the nature of duties and the functions assigned to the employee concerned. When this anomaly was brought to the notice of the Respondent-Management, the Respondent instead of setting right the anomaly offered in the year 1973 the Special Allowance of Rs. 49/- applicable to an Head Clerk. In spite of the best efforts by the Union, they were not able to give the supervisory staff scale of pay. Hence this application and to pass an award to give these two employees the salary of Supervisory staff from 1973 with all consequential benefits.

3. The Respondent-Bank in their counter statement states that this dispute is not an industrial dispute under the Act enabling the Tribunal to try the dispute. The Petitioner-Union is not entitled to claim an award as asked for. The dispute to claim those two employees as supervisory staff is not sustainable and they belong to award staff category and do not perform any functions of a supervisory nature. The post for which they applied and to which they are appointed is in the award staff cadre and as per the advertisement in "The Hindu" dated 7-11-1970 it was categorically stated that the selected candidates after confirmation in the bank services will be entitled to the salary and other benefits of the Bank's award staff. Fully understanding and agreeing to the terms of employment, the two employees applied for the post and were ultimately selected and confirmed in the post of Electrician-cum-caretaker in the Award Staff category. Now they cannot turn round and claim Officers' scale of pay. The two employees work under the direction, supervision and control of the Branch Manager of the Madras Main Branch of State Bank of Mysore. The duties assigned to them are not of a supervisory nature nor do they extract work from other employees as claimed by them. The work performed by them, namely, viz., general supervision of building repairs, sanitary installations, etc., clearly indicate that their supervision is not in respect of personnel since no personnel management or supervision is involved in their nature of work. The other work assigned to them such as booking of accommodation for train/travel and hotel accommodation etc., are of non-supervisory nature and they are incidental to their duties. This Bank cannot be asked to follow and implement service conditions of other Banks to its employees. The nature of work, qualifications, experience of employees in the other nationalised banks and other institutions are entirely different from the advertisement calling for candidates for appointments in those banks. It has been specifically stated in their appointment orders that they will be governed by the provisions of the Desai award as amended by Binartite Settlements regarding terms and conditions of service of employees. These benefits have been given to them and accepted by them. The claim that the emoluments payable to the two employees require revision and re-fixation to make them at par with the supervisory staff is without any basis. Hence the claim should be dismissed.

4. The point for determination is whether the action of the management in denying the supervisory scale of pay to Thiruvallargal V. R. Veeraraghavan and K. R. Srinivasan, Electricians-cum-Caretakers with effect from 1973 is justified? If not to what relief the workmen are entitled to.

5. On behalf of the Petitioners Exs. W-1 to W-26 were marked. No documents were marked on the side of the Management. On behalf of the Management M.W.1 and M.W.2 were examined. The Petitioner-Union in order to substantiate their case examined one of the employees Thiru V. R. Veeraraghavan as W.W.1. Thiru M. P. Anandan, Officer (Electrical Supervisor) in the United Commercial Bank, Zonal Office, Madras-I was examined as W.W.2.

6. W.W.1 would speak to the fact of his qualification and his appointment with the Respondent-Bank and also nature of duties that have been entrusted to. He swears that he is in charge of entire electrical installation, lifts, pump sets, air-conditions and generators in the Respondent-premises which is a multi storied building. According to him, the other employee Thiru K. R. Srinivasan was also entrusted with the same duties. He would also speak about his experience prior to his joining in the Respondent-Bank and also that persons doing the same nature of duties in Indian Bank and United Commercial Bank are given Officer's cadre pay. In the cross-examination, though he would concede that he would be in the cadre of award staff but would state that Lift Operators and Wiremen are under his control, of course he has no powers to sanction expenditure and that he has to report to Branch Manager to get his approval for expenditure. W.W.2, an employee from the United Commercial Bank is also having the same qualification as that of W.W.1 and that he joined the United Commercial Bank on 28-11-1970 and he has been promoted to Grade-II Officer from 1-10-1987 and before his promotion

he drew a salary of Rs. 4500. Coming to the nature of duties in his Bank he would state that he performs the duties, namely, maintenance of high tension and low tension equipments, operation and maintenance of Aircondition plant, repairs in connection with sanction, civil works, replacement of fixtures, furniture and electrical items; correspondence with Electricity Board, Corporation of Madras, Metro Water and Sewerage Board, maintenance of water supply and water lines, etc. According to him he knows W.W.1 and K. R. Srinivasan and hold the same qualifications as that of him. In the course of cross-examination, it was elicited that his employer has five Regional Officers, 150 Branches and the employees are working under him to assist him and he can put up proposal for incurring expenditure which has to be sanctioned by the Assistant General Manager. Thus it is shown by the Petitioner that a similar employee with same qualification working in other Nationalised Bank is given an Officer's scale of pay whereas W.W.1 and Thiru K. R. Srinivasan are only given award staff pay with no further avenue for promotion as in the case of clerical staff though the nature of work done by them as well as clerical staff is different.

7. As against the evidence of W.W.1 and W.W.2, the Respondent-Bank examined M.W.1 and M.W.2. M.W.1 is the Estate Manager of the Respondent-Bank and in-charge of the building in Bangalore. According to him, the Respondent-Bank is a similar institution when compared to United Commercial Bank and that two employees Thiruvallargal V. R. Veeraraghavan and K. R. Srinivasan were working in the Madras Branch as from 1985 to 1986 and they belong to award staff since they were recruited as members of award staff. They are in charge of electrical installation in Madras Main Branch and maintaining records of rents received from the tenants in the building at Madras and they are under the control of Branch Manager and in his absence the Accountant. He also adds they do not have any administrative or managerial powers or disciplinary control over other employees. In the cross-examination, it has been elicited their hours of duty is from 8.00 A.M. to 3.00 P.M. whereas the normal working hours of the managerial staff are 10.00 A.M. to 5.00 P.M. Though he would deny those employees have supervisory power over electrician and liftmen, would accept the duties performed by them are as listed in paragraph (5) of the claim statement. He would also concede that those two employees were in charge of supervision work when Best and Crompton Company has installed one generator. He also concedes the supervision of electrical work given to any contractor. M.W.2 is the Regional Manager now and then Branch Manager in Madras from 1984 to 1986. According to him, those two Claimants were under his control during his tenure and they are only members of award staff and they were not doing any supervisory work. He would accept Exs W-5 and W-6, the appointment orders. In the cross-examination he would concede that United Commercial Bank and the Respondent-Bank come under the same classification as 'A' Class. It is seen further in the cross-examination of this witness, clerks belonging to the award staff subject to eligibility criteria are promoted as Officers and they get their officer promotion normally in ten years, whereas the Claimants even continued to be members of the award staff. He also admits that there were complaints with regard to the work of the Claimants during his tenure. He would also admit the duties entrusted to them, namely, in charge of electrical connection, maintenance of building etc. According to him, the Electrical and Lift Operator carry out repairs under the guidance of the two Claimants. Since these two Claimants, since these two Claimants are not empowered to take disciplinary action against the staff they cannot be considered as supervisory category. They would only report the mistakes of subordinates to the Manager or Accountant. Now on the oral evidence let in by the Claimants and the Management, it remains to be seen whether the Claimants though belong to award staff have supervisory work so as to claim the pay as supervisory staff.

8. It is the case of the learned counsel for the Respondent that as per appointment orders they are only in charge of supervisory work relating to machine, building, repairs, etc.,

and it does not relate to supervision over one person or other person. In other words, there is no personal supervision involved in the case of the Claimants over the staff and therefore they have no right to claim supervisory scale of pay. It is also urged that as per advertisement in the news paper inviting applications for the post of Electrician-cum-Caretaker under Ex. W-3 and as per appointment orders issued to them under Exs. W-4 and W-5 respectively they belong to category of award staff though designated as Electrician-cum-Caretaker. As per appointment orders Exs. W-4 and W-5 relating to Ithruvalargal K. R. Srinivasan and V. R. Veeraraghavan, the Claimants, they were appointed as Electrician-cum-Caretaker and they would be governed by Desai Award as amended by Bipartite Settlement. It is not disputed by either party that they belong to the category of award staff. Reliance is placed on Exs. W-2 and W-4 to show the nature of duties which have been entrusted to them. It shows that they are to be in charge of entire electrical installation, Lifts, etc., general supervision and maintenance of buildings, repairs etc., water supply, storage, distribution, general sanitation of the entire building, general assistance with the Manager with regard to the work connected with the maintenance of buildings, liaison work with Corporation, Electricity Board and Government. These duties according to the Management are not supervisory nature whereas according to the Petitioner-Union they involve the supervisory nature. It is the case of the Respondent-Management those duties relate to machine, building, instruments etc., and they do not relate to supervision of staff. But it is pointed out by the Claimants that M.W.1 and M.W.2 would admit that they got supervisory work. Though according to the Management, the supervisory work spoken to by M.W.1 and M.W.2 should be understood that the work relates to supervision of building, maintenance, repair, etc. It may be true as per M.W.1 and M.W.2 that those Claimants do not have administrative control over the staff or to incur expenditure. But it cannot be said that the employees working under them have to take instructions from the Claimants in respect of their work. It is seen from Ex. W-1, the Competency Certificate given by Licensing Board that the claim is authorised to carry out and supervise High, Medium and Low Voltage Electrical Installation Works but does not permit him to undertake electrical contracting work. Any way, the fact remains that they do not have disciplinary powers against their subordinate but they have control over them while extracting work. At this stage, it is significant to note that though M.W.2 would swear that only when they are empowered to take disciplinary action, they would be considered as supervisory category. Excepting the interested testimony of W.W.2, M.W.2 has not produced any document to show that persons with disciplinary powers alone can be classified as supervisory category.

9. In this connection, the learned counsel for the Petitioner-Union relied on 1985-II-L.L.J. (S.C.) page 401 (Arkal Govind Raj Rao vs. Ciba Geigy of India Ltd., Bombay). In that case, a Stenographer cum-Accountant working in a commercial organisation was appointed as Assistant and designated as group leader and included in the 'convenanted contractual staff cadre'. As a group leader in addition to clerical duties the employee was looking after the work of two other members of the group. He was also to compete the work allotted to the group within time schedule. He was also preparing back reconciliation statements. Over and above his work he also supervised the work of the persons in his group to create the impression that his duties became mainly supervisory. While so when he was terminated, a reference was made in the Labour Court at Bombay which accepting the preliminary objection raised by the Management found that the employee was not 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act. The writ petition filed against the Management was also dismissed by the High Court. Allowing the Civil Appeal preferred by the employee, Supreme Court held when an employee has multifarious duties and a question is raised whether he is a workman or not, the Court must find out what are the primary and basic duties of the persons concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words the dominant purpose of employment must be first taken into consideration and the class of some additional duties must be rejected

while determining the status and character of the person. The Supreme Court further held :

"The definition of the workman clearly shows that the person concerned would not to be a workman if he performs some supervisory duties but he must be a person who must be engaged in supervisory capacity. Incidental performance of supervisory duties would not make the appellant a person employed in supervisory capacity."

This decision is not directly on the point. It would be of help to add out from the nature of duties, namely, the dominant purpose of employment to decide the status and character of the person. In that case, since the employee had also some supervisory work, a contention was raised that he was not a workman. The Supreme Court held that the incidental performance of supervisory duties would not make the person employed in supervisory capacity and therefore from the primary and basic duties of the person concerned he was held to be a workman. Finally, the Appeal was allowed and the matter was remitted for the enquiry.

10. Bearing in mind the law laid down by the above Supreme Court decision, the primary and basic duties performed by the Claimants necessarily includes supervisory duties and it cannot be contended the supervision related to maintenance of building, repairs, etc. The duties entrusted to them, namely, supervision, maintenance of building repairs, sanitation of the building, in charge of electrical installation, lift, etc., liaison with the Corporation, State Government, etc., other general work like preparation of vouchers, cheques would naturally involve sufficient number of staff working under them though they cannot take any disciplinary action. At the risk of repetition it has to be stated the Respondent-Management had not chosen to substantiate the contention that in the absence of disciplinary powers, it would deprive them their supervisory control over the staff. For these reasons, I have to hold that the Claimants had supervisory work though they had been designated as Electrician-cum-caretakers, and belonged to the award staff.

11. The learned counsel for the Union raised yet another argument, namely, that a clerk who also belongs to award staff has promotional opportunities to become an officer whereas the claimants have no scope for their promotion. In this connection, M.W.2 would admit in the cross-examination that a clerk also belongs to the award staff. He added subject to eligibility criteria, the clerks are promoted as Officers and that they get their promotion normally after completion of 10 years. He also conceded there is no promotion policy in their Bank for the job of Electrician-cum-Caretaker. Incidentally, it is curious to note that these two Claimants though were appointed as early as 1971 they continued in the same category of award staff without any promotion. It is also significant to note that though their duties and working hours are entirely different from that of a clerk i.e. award staff they have been included in the category of award staff but without any scope for promotion. It is seen in the case Claimants once they are award staff always an award staff. In the absence of any promotion policy for the job of Electrician-cum-Caretaker, it can be said they are not treated equally with other award staff. In other words, the disparity is such that they continued only as award staff right from the date of appointment till now while others get their promotion. The learned counsel for the Claimant-Petitioners relied on two judgements of the Supreme Court reported in 1988-I-L.L.J. page 370 and 396. In 1988-I-L.L.J. page 370 (Daily Rated Casual Labour employed under P & T Deptt. vs. Union of India & others) the Supreme Court has held that daily rated casual labour in the Post and Telegraphs Department who were working for 10 years as casual labourers and doing the same type of work as regular employees though they were not regularly employed they are entitled to minimum pay payable to the employees in the corresponding regular cadre. In fact the Central Government was directed to prepare a Scheme for absorption of casual employees as regular employees. Similarly in 1988-I-L.L.J. Page 396 (U.P. Income-tax Department Contingent Paid Staff Welfare Association vs. Union of India and others) the same

question arose regarding the scheme of Contingent Paid Staff in the Income-tax Department on daily rated wages for eight years or more who had paid lower salary than regular Class IV employees. The Supreme Court following the earlier Judgment directed the Government to pay the Contingent Staff, pay, allowances and other benefits on a par with regular Class IV staff of corresponding posts and also directed to prepare a scheme for absorption of such staff who worked for more than one year in the Department. These decisions show that equal pay for equal work should be given.

12. The above decisions cannot be ignored contending that they are not directly applicable to the facts of the present case. In this case, the claimants though belong to the category of award staff and doing more responsible work than the clerical staff in the award staff, they have been deprived of their atleast equal pay than the employees who do less responsible work in the same category. Incidentally, the learned counsel for the Petitioners also furnished a list showing one Thiru Gopalathnam who joined the service of the Bank as Award staff (Clerk) in the year 1972 got promoted in 1978 to Junior Management Cadre in a higher scale and again in 1988 an another promotion to Middle Management Second Cadre. When he joined in 1972, he drew a salary of Rs. 369; in 1978, Rs. 1400 and in 1988 Rs. 5000 whereas the Claimant Thiru V. R. Veeraraghavan who joined in 1971 as an award staff still continued to be award staff and draw a salary of Rs. 3925 in 1988 and similarly other Claimant Thiru K. R. Srinivasan who also joined in 1971 as an award staff draws a salary of Rs. 3600 in 1988. The disparity in salary between Thiruvalargal V. R. Veeraraghavan and K. R. Srinivasan on one hand and Thiru Gopalathnam on the other hand is not less than Rs. 1400. It is relevant to note that the said Gopalathnam joined in the Bank only in 1972 whereas the other two Claimants joined service in the year 1971 in the same cadre. This fact cannot be denied by the Respondent-Management. It is also not the case of the Management that there are complaints or enquiries pending against the claimants. For the above reasons, it is found the action of the Respondent-Bank in denying the supervisory scale of pay to the two Claimants, namely, Thiruvalargal V. R. Veeraraghavan and K. R. Srinivasan with effect from 1973 is not justified.

13. Coming to the relief, the claimants have furnished a statement containing fixation of their pay in Junior Management-I Cadre, Middle Management-II Cadre and Middle Management-III Cadre. They have given the particulars based on the normal period of time taken in getting the next promotion cadre. This Statement cannot be accepted for the simple reason that one cannot say whether Claimants would have routinely got their next cadre during the relevant years noted therein. The promotion depends on various contingencies depending on the vacancies that would accrue in different years. It cannot be routinely fixed as stated by them in the statements. Hence the Respondent-Bank has to work out and fix the supervisory scale of pay.

14. In the result, an award is passed directing the Respondent-Bank to fix the supervisory scale of pay to the two claimants with effect from 1973. There will be no order as to costs.

Dated, this 22nd day of February, 1989.

Sd/-

Industrial Tribunal

[No. I-12012/76/88-D-II(A)/D III (A)]

P. V. SREEDHARAN, Desk Officer

WITNESSES EXAMINED :

For Workmen :

W.W. 1—Thiru V. R. Veeraraghavan.

W.W. 2—Thiru M. P. Anandan.

For Management :

M.W. 1—Thiru D. S. Shetty.

M.W. 2—Thiru B. Muthusamy.

DOCUMENTS MARKED :

For Workmen :

Ex. W-1/6-11-64—Certificate issued by the Electrical Licensing Board to W.W. 1 (Xerox copy).

Ex. W-2/13-12-68—Appointment letter issued to W.W. 1 (Xerox copy).

Ex. W-3/1-11-70—Advertisement in "The Hindu" for inviting application for the post of Electrician-cum-Caretaker (Xerox copy).

Ex. W-4/5-4-81—Appointment order issued to K. R. Srinivasan (Xerox copy).

Ex. W-5/15-4-81—Appointment Order issued to W.W. 1 (Xerox copy).

Ex. W-6/16-4-81—Appointment Order issued to K. R. Srinivasan (Xerox copy).

Ex. W-7/16-4-81—Duties of Electrician-cum-Caretaker as issued by the Respondent (Xerox copy).

Ex. W-8/23-10-82—Advertisement showing the posts of Caretaker and Electrical Supervisors are in the Junior Management Cadre Scale I (Xerox copy).

Ex. W-9/12-11-82—Advertisement issued by Banking Services Recruitment Board for Junior Civil Engineers (Xerox copy).

Ex. W-10/12-11-82—Advertisement showing Junior Maintenance Engineers post is in the officer cadre (Xerox copy).

Ex. W-11/28-2-84—Officer Order (Xerox copy).

Ex. W-12/17-4-84—Advertisement showing the duties of the Senior Assistant Engineer are the same like that of Petitioner (Xerox copy).

Ex. W-13/16-8-84—Dispute raised by the petitioner-Union for fitment of Srinivasan & W.W. 1 in the Officer's scale of pay (Xerox copy).

Ex. W-14/22-11-84—Counter by Management to Assistant Commissioner of Labour (Central) Madras-6, (Xerox copy).

Ex. W-15/28-1-85—Minutes of the conciliation proceedings (Xerox copy).

Ex. W-16/30-3-85—Conciliation failure report (Xerox copy).

Ex. W-17/3-86—Office order asking W.W. 1 & K. R. Srinivasan to take charge of Generator (Xerox copy).

Ex. W-18/22-1-73—Management's letter to the Branch Manager, Madras advising him to pay Special Allowance of Rs. 49 to W.W. 1 & K. R. Srinivasan (Xerox copy).

Ex. W-19/8-9-87—Union's letter (Central Office) to the Bank Secretary (Xerox copy).

Ex. W-20/7-1-83—Management's letter to the General Secretary State Bank of Mysore Employees Union (Central Office, Bangalore (Xerox copy).

Ex. W-21/20-2-84—Extract of Page No. 9 from the Office Order, State Bank of Mysore, Madras (Xerox copy).

Ex. W-22/16-3-85—Extract from Office Order (Xerox copy).

Ex. W-23/29-6-87—Extract of Office Order (copy).

Ex. W-24/12-12-67—Certificate issued to W.W. 1 by M/s. Sethuraman, Thiagarajan and Co., (Xerox copy).

Ex. W-25/12-2-70—Certificate issued by M/s. Wilson & Co. (P) Ltd., to W.W. 1 (Xerox copy).

Ex. W-26/5-2-68—Certificate issued to Thiru K. R. Srinivasan by the General Electric Co., of India Ltd., (Xerox copy).

For Management : NIL.

नई दिल्ली, 21 मार्च, 1989

soring union, Bihar Colliery Kamgar Union, details apart, is as follows :

का. भा. 669.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लिमिटेड की बौरा कोलियरी के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-3-1989 को प्राप्त हुआ था

S.O. 669.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the M/s. Bharat Coking Coal Ltd., Bhowra Colliery and their workmen, which was received by the Central Government on the 14-3-1989.

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 34 of 1984

PARTIES :

Employers in relation to the management of Bhowra (South) Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

APPEARANCES :

For the Employers.—Shri R. S. Murthy, Advocate.

For the Workmen.—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 27th February, 1989

AWARD

By Order No. L-20012(15)84-D.III(A), dated the 30th June, 1984, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the dispute to this Tribunal for adjudication with following schedule :

"Whether the demand of Bihar Colliery Kamgar Union that the management of Bhowra (South) Colliery of Messrs Bharat Coking Coal Limited should give their workers, S/Smt. Bara Barti Kamin and Jogti Kamin, permission for resumption of their original duty as piece-rated stackers or any other equivalent job, is justified? If so, to what relief are these workers entitled and from what date?"

2. The case of the female workers as appearing from the written statement submitted by the spons-

Smt. Bara Barti Kamin and Jogti Kamin, the concerned female workers had been working as permanent Hard Coke Bhatta Stackers in Bhowra (South) Colliery since long with unblemished record of service. As a sequel to its policy decision to remove all female workers from service, M/s. B.C.C. Ltd. formulated Voluntary Retirement Scheme envisaging employment of male dependent of a female worker retiring from service voluntarily. In pursuance of this policy decision the management removed five female workers including the concerned female workers from service with effect from 1-9-1978 without assigning any reason. This precipitated action of the management gave rise to an industrial dispute which was referred to for adjudication by the appropriate Govt. to the Central Govt. Industrial Tribunal No. 2, Dhanbad. The reference was registered as Reference No. 102 of 1979 and the learned Presiding Officer of the said Tribunal was pleased to pass an award in favour of the workmen by directing the management to pay them full back wages. The management, however, did not accept the award of the Tribunal in good grace, and immediately after reinstatement in service started harassing the poor workers listed in the Reference in the different ways. The concerned female workers were transferred to Moulding Shop to work as time-rated workmen by the management. Consequent upon this an industrial dispute was raised by the sponsoring union before the A.L.C.(C), Dhanbad on 16-4-83 demanding their regularisation in time-rated job in Moulding Shop. The management, however, actuated by an anti-labour policy stopped them from duty with effect from 19-7-1983 during the pendency of conciliation proceeding and as an aftermath the union had to lodge complaint with the A.L.C. (C) for the illegal and arbitrary action of the management. Before the A.L.C.(C) the representative of the management assured to allow the concerned female workers to resume their original duties. In pursuance of the assurance of the management the concerned female workers reported for their original duties but the management ranged from its assurance and did not allow them to resume their duties. They are active members of Bihar Colliery Kamgar Union and the local management was/is very much biased and prejudiced against the members of the said union. The conciliation proceeding ended in a failure due to the adamant attitude of the management. In the circumstances the appropriate Government has referred the dispute for adjudication by this Tribunal. The action of the management in stopping the concerned female workers from duty with effect from 19-7-1983 is illegal, arbitrary, unjustified and against the principle of natural justice and also against the provisions of Standing Orders. The demand of the union is for reinstatement of the concerned female workers in service with full back wages with effect from 19-7-1983 and also for permission to resume duties.

3. The management of Bhowra (South) Colliery of M/s. B.C.C. Ltd. in its written statement has stated as follows :—

The concerned female workers along with another, employed to perform the job of Stackers, submitted

a joint petition to the Manager, Bhowra (South) Colliery praying for allotment of light duties in time-rated category on health ground. The management considered their application and transferred them to Workshop as General Mazdoors purely on temporary basis in June, 1982. Since they were transferred to a Workshop on their request purely on temporary basis, the management, by issuing an Office Order dated 2/9-5-1983 transferred them back to their original jobs as piece-rated Stackers at No. 16 Coke Bhatta with effect from 9-5-1983. But they did not report for duty whereupon another Office Order dated 17-7-1983 was issued. Thereafter the management was constrained to issue another Office Order dated 25/30-8-1983 directing them to report for duty at No. 16 Coke Bhatta, but in spite of all these Office Orders they did not report for duties at No. 16 Coke Bhatta till October, 1986. They, however, joined their duties in October, 1986 as piece-rated stackers in No. 16 Coke Bhatta. In view of these facts and circumstances there can be no question of the management giving them permission for resumption of their original duties as they have since joined their original duties as piece-rated Stackers in October, 1986. It was open to them to join their duties any time before October, 1986. The question of the management giving them permission to resume their duties at any time did not arise because they were called upon to join their duties repeatedly. In the circumstances, the management has prayed that the instant reference be dismissed.

4. In rejoinder to the written statement of the management the sponsoring union has emphatically denied that the concerned female workers represented before the management for providing them light duties in time-rated category on health ground and that they were transferred to Workshop, on their own request or that they were engaged temporarily in time-rated jobs. The union has emphatically stated that the concerned female workers in pursuance of the direction of the management reported for their original duties but the management could not provide them their original duties as Hard Coke Bhatta was closed during the time. They, however, reported for duties several times but they were not allowed to resume their duties on some pretext or other by the management. Earlier they were stopped from duties in 1978 which gave rise to the industrial dispute culminating in Reference No. 102 of 1979 before the Central Govt. Industrial Tribunal No. 2, Dhanbad. The management it is alleged, has preferred Writ Petition before Patna High Court, Ranchi Bench against the award passed by the Central Govt. Industrial Tribunal No. 2, Dhanbad and the Hon'ble Court has directed the management to pay half the back wages to the concerned female workers and the matter is still pending before the High Court. In the circumstances, the union has further reiterated that the concerned female workers be allowed to resume duties and paid back wages for the forced idle period.

5. In rejoinder to the written statement of the sponsoring union the management has stated that the concerned workers had been working as Hard Coke Bhatta Stackers in Bhowra (South) Colliery for few years. The management has denied that Voluntary

Retirement Scheme was introduced in order to axe female workers, but that it was introduced with a view to employ more miner/loader in the underground section of the mine where female workers are prohibited to work. The management has denied that the concerned female workers were harassed in any way and reiterated that they were transferred to Workshop consequent upon their prayer for allotment of light duty in time-rated category. The management has further reiterated that time and again they directed the concerned female workers to report at No. 16 Coke Bhatta but they did not turn up. By Office Order dated 12-9-1983 as many as 40 workers including the concerned female workers were transferred to No. 16 Siding of Bhowra (South) Colliery to work as wagon loaders. All but the concerned female workers joined duties as wagon loaders. There is no basis to allege that they were stopped from duty by the management since they were not stopped from duty, the question of giving an assurance before the A.L.C.(C), Dhanbad to allow them to resume their duties could not and did not arise. The management has also denied the other allegations against it as made by the sponsoring union.

6. The sponsoring union has examined Bara Barti Kamin, one of the concerned female workers, as WW-1 and laid in evidence their Identity Cards which have been marked Exts. W-1 and W-2. On the other hand, the management has examined Gopi Choudhury as MW-1 who was posted to Bhowra (South) Colliery of M/s. B.C.C. Ltd. from 1963 to 1973 and again from 1976 to 1988 and laid in evidence one item of document which is a photo copy of Office Order dated 12-9-1983 which has been marked Ext. M-1.

7. The written statement of the sponsoring union discloses that the concerned female workers had been working as permanent Hard Coke Bhatta Stacker in Bhowra (South) Colliery WW-1 Bara Barti Kamin has testified in support of their case. She has stated in her testimony that she and her co-worker Jogti Kamin were appointed as Hard Coke Bhatta Stackers by the erstwhile private employer.

The management has taken contra position in its written over the issue. In the written statement it has been disclosed that the concerned female workers submitted an application to the management disclosing that they were very weak due to illness and unable to perform the job of stackers in piece-rated category. By implication it means that they were employed as stackers. In the Identity Cards issued by the erstwhile private owner they were designated as Stackers (Exts. W-1 and W-2). But the management has admitted in its rejoinder to the written statement of the sponsoring union in no uncertain terms that the concerned female workers had been working as Hard Coke Bhatta Stackers in Bhowra (South) Colliery. Thus, there is no scope from the position that the concerned female workers were employed as Hard Coke Bhatta Stackers in Bhowra (South) Colliery of M/s. B.C.C. Ltd.

8. The case of the sponsoring union is that five female workers including the concerned female workers were removed from service with effect from 1-9-1978 by the management without assigning any

reason and that gave rise to an industrial dispute being Reference No. 102 of 1979 as referred by the appropriate Government for adjudication to Central Govt. Industrial Tribunal No. 2, Dhanbad and that the Tribunal passed an award in favour of the workmen and directed the management to pay them full back wages. The contention of the union in this respect is squarely embedded and manifested by the award passed by the Presiding Officer, Central Govt. Industrial Tribunal No. 2, Dhanbad.

9. The case of the sponsoring union is that the management transferred the concerned female workers to Moulding shop as time-rated workers. There is not a whit of evidence on record to indicate that they were transferred to Moulding shop. On the contrary the specific case of the management is that they were transferred to Workshop as General Mazdoors in June, 1982. That they were transferred to Workshop is borne out from the evidence of WW-1 Bara Barta Kamin also. She has admitted that they were transferred to Workshop as time-rated workers consequent upon the closure of Bhatta. That being so, the position is reached that the concerned female workers were transferred to Workshop as time-rated workers.

The case of the management is that this transfer was effected on the basis of prayer of the concerned female workers for allowing them light duty in time-rated category on health ground. But the witness for the management has not examined himself on this point nor has the management laid any evidence on this score. On the other hand, WW-1 Bara Barta Kamin has emphatically denied that they applied to the management for allotment of light duties in Workshop since they were keeping indifferent health. Anyway, the fact remains that they were transferred to Workshop on time-rated job.

10. The case of the sponsoring union is that an industrial dispute was raised on 16-4-83 before the A.L.C.(C), Dhanbad demanding regularisation of the concerned female workers in time-rated jobs. The management has not denied that an industrial dispute was raised by the sponsoring union over the issue of regularisation of the concerned female workers in time-rated jobs. All that the management has stated is that the question of regularisation was pointless since the concerned female workers were transferred to the time-rated jobs on their own seeking. WW-1 Bara Barta Kamin has also testified that after working for a year in the Workshop they prayed for regularisation in service before the A.L.C.(C), Dhanbad. Her evidence almost chimes in with the fact relating to the time when the industrial dispute was raised by the union.

The sponsoring union has stated before the A.L.C.(C) that the management gave assurance for allowing the concerned female workers to resume their original duties. The management has of course denied this in its written statement. But no evidence has been laid by the management in denial of this assurance. On the other hand, Bara Barta Kamin has stated that before the A.L.C.(C) the management told them to

work as Hard Coke Bhatta Stackers. Anyway, consideration of this matter in depth is not necessary in order to adjudicate upon the controversy raised in the present industrial dispute.

11. According to the management the concerned female workers were transferred to Workshop in June, 1982 as time-rated workers, and according to the written statement of the sponsoring union industrial dispute was raised on 16-4-83 over the issue of the regularisation in time rated jobs. As I have stated earlier that the case of the sponsoring union is that before A.L.C.(C), Dhanbad the management agreed to allow the concerned female workers to resume their original duties. This has been denied by the management. But it appears from the sheaf of papers filed by Shri R. S. Murthy, Advocate, for the management that the same included letter of management dated 15-7-1983 to the A.L.C.(C), Dhanbad and some Annexures. By issuing Office Order dated 3/9-5-83 (Annexure-B) the management transferred the concerned female workers to their original jobs with copies to the persons concerned. By issuing another Office Order dated 17-7-83 the concerned female workers were again transferred to their original jobs with copies to the persons concerned (Annexure-C). By issuing yet another Office Order dated 25/30-8-83 (Annexure-D) the concerned female workers were again directed to report for duties in their original jobs immediately and informed them of legal action, in default. There is no evidence on record to show that these Office Orders were served on the concerned female workers. The witness for the management has not examined himself on the point of service of Office Order upon them. He has admitted that whenever a workman receives an order of transfer he does so by putting his signature or thumb impression on Receipt Book or paper. The management has not produced the Receipt Book or paper in order to show the service of notice of transfer upon the concerned female workers.

The sponsoring union has filed certified copy of deposition of Sri R. E. Srivastava posted as Manager from 1983 till 1987 in Bhowra (South) Colliery. It appears that testimony of Sri Srivastava was recorded by the Presiding Officer, Central Govt. Industrial No. 2, Dhanbad, in Reference No. 12 of 1986. Sri Srivastava has stated that Hard Coke Bhatta of Bhowra (South) Colliery was closed sometime in the month of July or August, 1983 and it again started working in December, 1986. If that be the position the transfer order issued by the management dated 17-7-1983 and 25/30-8-83 whereby the concerned female workers were transferred to Hard Coke Bhatta when the same was closed is considered nothing but a faux pas.

11. It appears that the management by issuing another Office Order dated 12-9-83 (Ext. M-1) with copies to the persons concerned, transferred the concerned female workers and 38 others were to No. 16 Biding for duties, MW-1 Gopi Choudhury has stated that all but the concerned female workers covered by the order reported for duties, but they did not. But no evidence is forthcoming that this Office Order was served on the concerned female

workers. One intriguing fact is that this Office Order dated 12-9-83 has not been referred to by the management in its application to the A.L.C.(C), Dhanbad, dated 15-7-83 although the other Office Orders referred to above have been stated therein. Along side this fact the case of the sponsoring union that the concerned female workers were stopped from duties from 19-7-83 should be considered. It is the firm case of the sponsoring union that after the assurance given by the management the concerned female workers reported for their original duties, but they were not allowed to resume their duties. The witness for the management has not denied or affirmed this position. On the other hand, Bara Barti Kamin has emphatically stated that they went for their duties but since the Hard Coke Bhatta remained closed they could not get employment there and that the management allowed them to work as Hard Coke Bhatta Stackers since October, 1986. I cannot fathom as to why the poor workers should allow them to drift away in idleness and thereby lose their square meal specially when their employers allegedly were coaxing them to report for duties. However, since the concerned workers have been allowed to join their duties from October, 1986 it is not necessary to pass any order directing the management to reinstate them in service. They are, however, entitled to back wages from the date of the present reference i.e. 30-6-1984 till their resumption of duties in original jobs in October, 1986.

12. Accordingly, the following award is rendered—the demand of Bihar Colliery Kamgar Union that the management of Bhowra (South) Colliery of M/s. B.C.C. Ltd. should give their workers, Smt. Bara Barti Kamin and Jagti Kamin, permission for resumption of their original duty as piece-rated stackers or any other equivalent job, is justified. But since the concerned female workers have already joined their duties no direction is made to the management for allowing them to resume their duties. They are, however, entitled to back wages from the date of the reference i.e. 30-6-1984 till the date of resumption of their duties i.e. September, 1986.

In the circumstances of the case, I award no costs.

S. K. MITRA, Presiding Officer

[No. L-20012/(15)/84-D.III(A)/IR(Coal-1)]

का. प्रा. 670—प्रारोपिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार, मैसम भारत कोकिंग कोल लिमिटेड की गमली टांड कोलियरी के प्रबंधन में संबद्ध नियोजकों और उनके कर्मचारों के बीच, प्रमुख में निम्नलिखित आयोगिक विवाद में केन्द्रीय सरकार आयोगिक अधिनियम (सं. 2) धनबाद के पंचाट को प्रकाशित करती है, जी केन्द्रीय सरकार को 14-3-1989 को प्राप्त हुआ था।

S.O. 670.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Dhanbad, as shown in the Annexure in the industrial dispute between the employers in relation to the M/s.

Bharat Coking Coal Limited (Gaslitand Colliery) and their workmen, which was received by the Central Government on the 14-3-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 139 of 1987

In the matter of an industrial dispute under Section 10(I)(d) of the I. D. Act., 1947.

PARTIES :

Employers in relation to the management of Gaslitand Colliery of M/s. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen : Shri D. K. Verma, Advocate

On behalf of the employers : Shri B. N. Prasad, Advocate

STATE : Bihar

INDUSTRY : Coal

Dated, Dhanbad, the 7th March, 1989.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(I)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (329)/86/D. III(A), dated, the 20th April, 1987.

SCHEDULE

"Whether the action of the management of Gaslitand Colliery of Katras Area of M/s. Bharat Coking Coal Limited in superannuating Smt. Jumratani Bibi, W/o. Khurshid Khan, Hard Coke Stacker with effect from 25-1-1986 is justified? If not, to what relief the workman is entitled?"

The case of the concerned workman Smt. Jumratani Bibi is that she was working as Hard Coke Stacker in Gaslitand Colliery of Katras Area of M/s. BCCL since 29-4-1972. The date of birth of the concerned workman was entered in Form B Register as 13-7-1930. Accordingly an identity card was issued to her by the management in which also her date of birth was recorded as 13-7-1930. She was also a member of C.M.P.F. in which also her date of birth was recorded as 13-7-1930. The date of superannuation of the concerned workman in the colliery is 60 years. She was superannuated prematurely with effect from 25-1-1986 when she had not completed 60 years of the age. The concerned workman was asked by the management to appear before the Apex Medical Board and on vague report of the Apex Medical Board the management had retired the concerned workman with effect from 25-1-1986. The concerned workman raised an industrial dispute before the ALC(C) and on failure of the conciliation

proceeding the present reference was sent to this Tribunal for adjudication. The superannuation of the concerned workman with effect from 25-1-1986 is illegal and arbitrary. On the above facts it is submitted that the concerned workman should be reinstated in her job with effect from 25-1-1986 with all back wages.

The case of the management is that the concerned workman was working as Hard Coke Stacker at Gaslitand colliery and her date of birth in Form B Register was recorded as 46 years in 1972. There was no recording of her date of birth in the CMPF records. In the Identity card of the concerned workman her date of birth was mentioned as 13-7-1930. Since there was variation in her recorded age in the documents of the management, the concerned workman was referred by the management to the Apex Medical Board of the company for assessment of her age in accordance with the JBCCI decisions. The Apex Medical Board examined the concerned workman on 10-12-1986 and assessed her age as 60(+) years on the date of her examination by the medical board. According to the decision of the JBCCI the age assessed by the Medical Board is final and binding. The concerned workman was superannuated from service of the company with effect from 25-1-1986 in view of the assessment of her age by the Apex Medical Board. The action of the management in superannuating the concerned workman with effect from 25-1-1986 is justified and lawful and as such the concerned workman is not entitled any relief.

The point for decision is whether the superannuation of the concerned workman with effect from 25-1-1986 is justified.

The management examined two witnesses and the concerned workman examined herself in support of their respective cases. The documents of the management are marked Ext. M-1 to M-8 and the documents of the concerned workman is marked Ext. W-1.

Admittedly the concerned workman was working in Gaslitand colliery as Hard Coke Stacker since 29-4-1972 and she was superannuated with effect from 25-1-1986.

The original Form B Register was filed by the management and marked as Ext. M-4. Subsequently the original Form B Register was taken back by the management after substituting the photo copy of the relevant entry containing the name of the concerned workman. It will appear that in the Form B Register Ext. M-4 the age of the concerned workman was recorded as 46 years on the date of his first appointment on 29-4-1972. The concerned workman WW-1 has stated in her cross-examination that her particulars including her age was noted down in Form B Register at the time of her appointment and she had given her LTI in the said Form B Register against her name. There is LTI against the entry of the name of the concerned workman in Ext. M-4 and she has not stated in her evidence that the said entry of her age is incorrect. In the W.S. of the concerned workman it is stated that her date of birth was recorded as 13-7-1930 in Form B Register which is not correct and Form B Register only records her age as 46 years on 29-4-1972. If we calculate from the age

recorded in Form B Register Ext. M-4 it will appear that the concerned workman would superannuate on 29-4-1986. Ext. M-3 is the identity card register from which it appears that the date of birth of the concerned workman was recorded as 13-7-1930. It will also appear that there was recorded of her age as 46 years in the age column which has been penned through. The identity card Ext. M-1 was prepared on the basis of identity card register Ext. W-3, and the date of birth of the concerned workman is recorded accordingly as 13-7-1930. If the date of superannuation of the concerned workman is to be calculated on the basis of her date of birth as 13-7-1930 the concerned workman is to be superannuated on 13-7-1990. The case of the management is that as there was discrepancy in the recording of age/date of birth of the concerned workman in the different registers of the management, the concerned workman was referred to the Apex Medical Board for assessment of her age according to the JBCCI instructions. The facts as stated above discloses that there was discrepancy in the recording of age/date of birth of the concerned workman in Form B Register and identity card register and accordingly I think the management was quite justified in referring the concerned workman to the Apex Medical Board for the determination of her age.

The Agent of Gaslitand colliery by his letter dated 2-5-1985 had written to the Personnel Manager, Katras Area informing that on scrutiny of records it was found that the concerned workman and others should retire as per age recorded in Form B Register. The letter also gives the details of their age as per Form B Register, identity card and declaration Form B and the persons named in Ext. M-1 were retired with immediate effect as per age recorded in Form B Register. The Personnel Manager went through the details given in the letter and he noted down that Sl. No. 2, 6 and 13 of the employees named in Ext. M-1 have no case and others were to be referred to the Apex Medical Board for assessment of their age as the age of those workmen recorded in Form B and C.M.P.F. were at variance except in the case of Sl. No. 8. The Personnel Manager also directed that the employees who are to be referred to the Apex Medical Board should be allowed to continue in the service with immediate effect. The said note of the Personnel Manager was approved and a letter was issued to the Agent Gaslitand Colliery vide Ext. M-2 to refer the cases of the concerned workman and others to the Apex Medical Board for the assessment of their age. Ext. M-8 is the proforma for age record to be used for age assessment and it was sent by the Personnel Manager to the Apex Medical Board. Ext. M-7 is the Form in which the particulars of the concerned workman is entered for assessment of her age by the Apex Medical Board. Ext. M-6 shows that the concerned workman was examined by the Apex Medical Board on 10-12-1985 and the medical board assessed the age of the concerned workman as 60 (+) years as on 10-12-1985. It is clear therefore that the medical board assessed the age of the concerned workman as more than 60 years on 10-12-1985 and the said age has to be accepted by both the parties according to the JBCCI instructions. The report of the Medical Board has established that the concerned workman was more than 60 years when she was examined by the Medical Board on 10-12-1985. The concerned workman admittedly

has been retired with effect from 25-1-1986 although according to the medical board she was more than 60 years of age on 10-12-1985. The concerned workman has therefore been superannuated after she had completed the age of 60 years. In view of the fact that the Apex Medical Board had found the age of the concerned workman as more than 60 years on 10-12-1985 it cannot now be said that the date of birth of the concerned workman was 13-7-1930. More so, when the concerned workman has not filed any document or has not examined any witness in support of the fact that she was born on 13-7-1930.

The oral evidence in the case is of not much importance regarding the date of birth of the concerned workman in face of the documents and finding of the medical board. I hold therefore that the age as recorded by the medical board has to be accepted. As discussed above it will appear that according to the assessment of the age of the concerned workman by the Medical Board she had already completed 60 years of age on 10-12-1985 and she was given even some more time for her superannuation. For the above reasons I see no reason to interfere in the order of the management retiring the concerned workman with effect from 25-1-1986 when she had already completed 60 years of age according to the assessment of her age by the medical board.

In the result, I hold that the action of the management of Gaslitand Colliery of Katras Area of M/s. BCCL in superannuating the concerned workman Smt. Jumratani Bibi Hard Coke Stacker with effect from 25-1-1986 is justified and consequently the concerned workman is entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer.

[No. L-20012/(329)/86-D. III(A)/IR (Coal-1)]

नई दिल्ली, 23 मार्च, 1989

का. आ. 671.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सेंट्रल कोल फील्ड्स लि. की कुजु कोलियरी के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार 13-3-89 को प्राप्त हुआ था।

New Delhi, the 23rd March, 1989

S.O. 671.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Kuju Colliery of M/s. Central Coalfields Ltd. and their

workmen, which was received by the Central Government on the 13-3-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 130 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

PATTIES :

Employers in relation to the management of Kuju colliery of M/s. Central Coalfields Limited, and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri J. P. Singh, Advocate.

On behalf of the employers.—Shri R. S. Murthy, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 3rd March, 1989

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(102)/85-D. IV(B), dated. the 3rd March, 1986.

SCHEDULE

“Whether the action of the management of Kuju colliery of CCL P. O. Kuju, Distt. Hazaribagh in denying regularisation to S/Shri Basanti Kamin and 13 other employees in Annexure A and not paying them difference of wages, when they have been working as time-rated for the last 5 years is legal and justified ? If not, to what relief are the concerned workmen entitled ?”

Sl. Name

1. Shrimati Basanti Kamin
2. Smt. Maiko Kamin
3. Smt. Dhanmati Kamin
4. Smt. Rudam Devi
5. Shri Dilwa Orin
6. Shrimati Shanmati Kamin
7. Smt. Surji Kamin
8. Smt. Lukhani Kamin
9. Smt. Nagia Bhuini
10. Smt. Kovi Munddan
11. Smt. Aghni Mahtain
12. Smt. Lalpati Kamin
13. Shri Charka Bhuia
14. Shri Brijlal Manjhi.

The case of the workmen is that the concerned 14 workmen were originally piece rated workers in Group III of Kuju colliery of M/s. CCL. Subsequently the management deputed them to work as general Mazdoor in domestic supply of coal. The job of domestic supply of coal is under the Welfare Department of the colliery. The system of the domestic supply of coal is that the Welfare department issues permit for supply of coal to the employees residing in the colony. The permits are handed over by the employees to the Munshi of the department. The Munshi in his turns takes the Concerned workmen to the Coal dump and thereafter the concerned workmen collect the coal in bags and put the coal bag on the departmental trucks and hands over the coal in the colony to the permit holder employees. The attendance of the concerned workmen is marked by the Munshi on the basis of which they are paid wages by the department. Although the nature of job performed by the concerned workmen is of general mazdoor, they are paid wages on the piece rate basis. The concerned workmen and their union made oral and written demand before the management to pay them cat. I wages instead of Group III wages but their demand was turned down by the management. The job of the concerned workmen by no stretch of imagination can be said to be piece rated work as the quantity of work done by them is not the subject matter of any measurement. There are piece rated workmen in the colliery, such as, miners, trammers wagon loaders, truck loaders and O.B.R. etc. who are paid on the basis of the quantity of output done by them. The nature of work done by the concerned workmen in the domestic supply of coal is purely of general mazdoor and their work is never measured nor their work can be measured. When the management did not accede to the demand of the workmen and their union to regularise the services of the concerned workmen on the basis of job performed by them as general mazdoor, an industrial dispute was raised before the ALC(C) Hazaribagh. During the conciliation proceeding the management did not give any justification for keeping the concerned workmen as piece rated workers. The conciliation failed and thereafter the present reference has been made to this Tribunal for adjudication. The management has acted arbitrarily and vindictively as after the failure of the conciliation the concerned workmen have been taken out of the domestic supply of the coal and given the job of O.B.R. in the quarry so that the rigid stand of the management may be vindicated. The action of the management in turning down the demand of the workmen is not justified. One of the concerned workman, namely, Smt. Basanti Kamin has been absorbed in Cat. I after the failure of the conciliation of the dispute and this establishes the correct stand of the workmen. On the above facts it is prayed that the concerned workmen be regularised as time rated workmen in cat. I and should be paid the difference of wages between their Group III piece rated wages and Cat. I time rated wages.

The case of the management is that the concerned workmen were originally group-III piece rated workers. The management has an arrangement to supply free coal to its employees for domestic consumption in specified quantity. The management supplies free coal to its monthly rated employees only. For this

purpose the coal is transported by the management by trucks and dumped in the residential colony at various places from where the monthly rated employees collect the coal. The process involves loading of coal at the coal stock in the colliery and unloading in the staff colony by the concerned workmen. The quantum of work involved in this process is extremely limited. Considering the arrangement made, it is also not amenable to measurement. The job description laid down for truck loaders under NCWA falls in piece rated Group-III and their work load is 4.5 tonne for loading of coal and 6.75 tonnes for unloading of coal per day. The concerned workmen in the domestic supply of coal at no time are required to load coal into trucks or unloading to the extent of the aforesaid work load on any day. The daily rated workers and piece rated workers collect coal from the mine and carry it themselves. The concerned workmen were along paid piece rated group-III wages and they raised no objection. The present demand is barred by the doctrine of estoppel waiver and acquiescence. The demand is also over-stale. The concerned workmen were put-back on their piece rated jobs even before the purported dispute was raised by their sponsoring union and as such there is now no question of their being placed in cat. I daily rated post as envisaged in the reference order. The piece rated group-III wages being paid to the concerned workmen were higher than the wages applicable to cat. I daily rated categories and it is incomprehensible as to how any difference of wages are being claimed by the sponsoring union for the concerned workmen. The concerned workmen have at no time performed the job of daily rated Cat. I workers as will appear from the job description laid down for such workers in NCWAs and the Coal Wage Board Recommendations. According to the management the facts and circumstances of the case do not raise any question of regularisation of the concerned workmen in any time rated post or payment of difference of wages to them. In view of the facts stated above the demand of the workmen and their union is not justified and the concerned workmen are not entitled to any relief.

The points for decision are (1) whether the concerned workmen are entitled to be regularised in the time rated job of Cat. I, (2) whether the concerned workmen are entitled to the payment of difference of wages of Cat. I and Group-III wages.

The management examined two witnesses in this case but the workmen did not examine any witness. However the documents of the workmen are marked Ext. W-1 to W-1/27 and the documents of the management are marked Ext. M-1 to M-2/3, I will take up the second point first. It is the admitted case of the parties that the concerned workmen were originally group III piece rated workers and that they were subsequently put to the job of domestic supply of coal to the monthly rated employees in their quarters and they were being paid Group-III wages as before. According to the workmen the concerned workmen were doing the job of general mazdoor in the domestic supply of coal and as such they demand

that they should be paid the wages of Cat. I. The management deny that the concerned workmen were performing the job of time rated category. On this controversy it has to be seen whether the job being performed by the concerned workmen is the job of time rated or piece rated job. MW-1 has stated in his evidence that since 1982 the concerned workmen were deputed to work in the delivery of the domestic coal to the employees. From the schedule of reference also it appears that the concerned workmen were claiming to be working in the time rated job for the last 5 years. In 1982 NCWA-II was in force. The job description of Group III piece rated workers is stated in NCWA-I. It gives job description of O.B.R. wagon loaders, truck loading/unloading coal stacking etc. A manual worker engaged in the loading/unloading of coal into trucks, trailers from depot/coal stock is in the designation of truck loading/unloading and their work load is 4.5 tonnes of loading and 6.75 tonnes unloading in one day. There is no designation/nomenclature, job description of time rated workers in Cat. I in respect of the workmen who are employed to load or unload coal. Thus it will appear clear that there is no job of loading and unloading of coal in the time rated category. MW-1 has stated the specific job being performed by the concerned workmen. He has stated that from the depot domestic coal for cooking purposes was loading on tipping trucks and was taken to the colony and was dumped at the different places. He has stated that the concerned workmen used to load the coal in the tipping truck at the depot. He has also stated that the group-III piece rated wages were applicable to the concerned workmen for doing the said job. He has stated that the concerned workmen had worked in the domestic supply of coal from 1982 to sometimes in 1986. He has also stated that there are separate group of labourers at the centre of the colony where the coal was dumped by the concerned workmen and those group of labourers used to supply the coal to the employees in their quarters. Even those workmen working at the centre of the colony were piece rated workmen like the concerned workmen. MW-1 used to maintain the attendance of the concerned workmen. He was working as an Attendance clerk. It will appear from para 4 of the W.S. of the workmen also that the Munshi takes the concerned workmen to the coal dump and the concerned workmen collect the coal in bags to be taken on the departmental trucks and handover to the coal bags in the colony. The only difference is that according to the concerned workmen they deliver the coal bags in the colony to the permit-holders where as according to the management the coal from the depot is dumped at the centres in the different residential areas and from there another set of labourers supplies the coal in the residence of the monthly rated employees. There is not much of difference between the parties regarding the job being performed by the concerned workmen. The job being performed by the concerned workmen is more akin to the job of truck loading/unloading of Group III piece rated workers. The concerned workmen were mainly performing the job of loading of coal in the truck at the depot and unloading the same at the centre in the residential colonies of the colliery. It is admitted case of the parties that the work-load of the concerned workmen as envisaged in the JBCCI in respect of the truck loading and unloading workmen was not being adhered to and in

fact there was absolutely no emphasis on fulfilling the work load as stated for truck loading and unloading designation of workmen. Non-performance of the work loading was not putting to the concerned workmen to any disadvantage as they were getting Group-III wages even without fulfilling the work load. I hold, therefore that the concerned workmen were actually doing the job of piece rated group-III.

The wages of the daily rated workers of Cat. I with effect from 1-1-79 according to NCWA-II was Rs. 15 per day which increased to Rs. 20.60-0.43-27.18 from 1-1-83. The wages of piece rated group III workers was Rs 16.36 with effect from 1-1-79 and it was raised to 22.71 with effect from 1-1-83. It will thus be apparent that the wages of piece rated group III was more than the wages of time rated Cat. I and the concerned workmen were getting more wages in Group-III than the wages of Cat. I as such there is no question of payment of difference of wages to the concerned workmen. On the contrary they were already receiving wages in Group-III more than the wages of Cat. I. The concerned workmen therefore were not entitled to the wages of Cat. I.

Point No. I

As already stated it is the admitted case of the parties that the concerned workmen were Group III piece rated workers and they were receiving the wages of Group III. I have already held above that the concerned workmen while performing their job in the domestic supply of coal were doing the job of the designation of truck loading and unloading. I have also held above that there is no job in the time rated category which was being performed by the concerned workmen in the domestic supply of coal and the duties being performed by them was that of the piece rated workmen of Group-III. In para 13 of the W.S. of the workmen it is stated that the concerned workmen have been taken out from the domestic supply of coal and given the job of O.B.R., which is the job of piece rated Group-III. In para 11 of the W.S. of the management it is stated that long before the present reference was made to the Tribunal and even before the so-called purported dispute was raised by the sponsoring union, the workers concerned were put back on their previous jobs and as such there was no question of their being placed in Cat. I on daily rated post. Thus this is an undisputed fact that the concerned workmen have been put as O.B.R. which is a piece rated Group-III job. MW-1 has stated that except the concerned workman Surji Kamin all other concerned workmen are presently working in the quarry since 1986. He has stated that Surji Kamin is still working in the domestic coal supply as piece rated group-III. It appears therefore that the concerned workmen accepted the work as O.B.R. in Group-III as they were originally in the piece rated job of Group-III. As the concerned workmen were performing the job of piece rated Group III while working in the domestic supply of coal there is no question of their regularisation in the time rated Cat. I job. Ext. M-2 to M-2/3 are bonus registers and Ext. W-1 series are papers to show the attendance of the concerned workmen in their job of domestic supply of coal. There is no dispute about their attendance or the payment of wages to them in Group-III and as such these documents are of no importance.

Incidentally it has been submitted on behalf of the management that the concerned workman Brijlal Manjhi died on 19-11-85, long before the reference was made and as such his case could not be considered in the present reference. Ext. M-1 is the office order dated 25/30-12-85 showing that the concerned workmen Brijlal Manjhi died on 19-11-85 and death certificate was issued to that effect by the Mukhiya. MW-1 has also stated that the concerned workmen Brijlal Manjhi died. There is no evidence to the contrary I hold therefore that the concerned workman Brijlal Manjhi died on 19-11-85. It is stated on behalf of the management that the concerned workmen Basanti Kamin applied for her transfer to Ranchi as her husband was working there and thereafter she was transferred to Ranchi after 1984. This is supported by the evidence of MW-1 and this fact is also admitted by the workmen in the W.S. of the workmen. It appears that she was transferred to Ranchi and given Cat. I on some special ground and as such the concerned workmen cannot compare their case with the case of Basanti Kamin.

In view of the evidence discussed above I hold that the concerned workmen are not entitled to be regularised in the time rated job of Cat. I.

In the result, I hold that the action of the management of Kuju colliery of M/s. CCL in denying regularisation of the concerned workmen and not paying them any difference of wages is quite legal and justified and consequently the concerned workmen are entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-24012/102/85-D.IV(B)/IR(Coal-I)]

नई दिल्ली, 27 मार्च, 1989

का. आ. 672.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुकरण में, केन्द्रीय सरकार, मैगर्स भारत कोकिंग कोल लि. की भोवरा एरिया संख्या-11 की भोवरा (दक्षिण) कोलियरी के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम सं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-3-1989 को प्राप्त हुआ था।

New Delhi, the 27th March, 1989

S.O. 672.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute the employers in relation to the management of Bhowra (South) Colliery of Bhowra Area No. XI, M/s B.C.C.L. and their workmen, which was received by the Central Government on the 14-3-1989.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 140 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Bhowra (South) colliery of Bhowra Area No. XI M/s. Bharat Coking Coal Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers—Shri B. Joshi, Advocate.

State : Bihar.

Industry : Coal

Dhanbad, the 7th March, 1989

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(150)/86-D.IV(B), dated the 23rd April, 1987.

SCHEDULE

“Whether the action of the management of Bhowra (South) colliery of Bhowra Area No. XI of M/s. Bharat Coking Coal Ltd., Dhanbad to dismiss Sri Magaram Bouri, Dumper Khalasi from services is justified ? If not, to what relief the workman is entitled?”

In this case only the workmen filed their written statement but the management did not file their W.S. subsequently both the parties appeared before me and filed a memorandum of settlement. I heard the parties on the said memorandum of settlement and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the Memorandum of Settlement which forms part of the Award as Annexure.

I. N. SINHA, Presiding Officer
[No. L-24012/150/86-D.IV(B)/IR (Coal-I)]

MEMORANDUM OF SETTLEMENT IN FORM 'H' WITH BRANCH SECRETARY, BCKU, BHOWRA BRANCH AND THE MANAGEMENT OF BHOWRA AREA UNDER RULE 58 INDUSTRIAL DISPUTE (CENTRAL) RULES 1957.

Management Side :
Shri JR Varman,
Dy. Chief Personnel Manager,
Bhowra Area.

Union Side :
Shri Dilip Chakravorty,
Branch Secretary, BCKU,
Bhowra Branch.

SHORT RECITAL OF THE CASE :

Shri Maga Ram Bori, Dumper Khalasi Bhowra (S) Colliery was dismissed from the services of the

Company for the proved charges of unauthorised absence from duty for a period of more than 11 months. Dispute was raised in conciliation which ended in failure. The matter was referred to the Ministry but before any decision in the matter could be taken by the Ministry, Shri Dilip Chakravorty, Branch Secretary, BCKU requested the management of Bhowra Area to settle the dispute amicably.

The matter was discussed in length with the union representative and after prolonged discussions it was agreed to settle the dispute on the following terms and conditions :-

TERMS AND CONDITIONS

- (1) Shri Maga Ram Bouri will be taken in employment as TR worker in Cat. II in UG Mines subject to his medical fitness to work in underground for which he will have to appear before the Medical Board to be constituted at Bhowra Hospital.
- (2) Shri Maga Ram Bouri/Union will have no Claim what-so-ever for the period of idleness from the date of discharge till the date of resumption of duty subject to medical fitness.
- (3) The dispute stands fully resolved on account of the settlement as at Sl. No. 1 & 2 above.

Management Side.
Shri JR Varman,
Dy. CPM, Bhowra Area.

Union Side.
Shri Dilip Chakravorty,
Branch Secretary, BCKU,
Bhowra Branch.

Witnesses :

1. Gupteshwar Nath Mishra.
 2. Guru Charan Bhumij
- Mech. Fitter Bhowra Cane Plant.

Presiding Officer

Central Govt. Industrial Tribunal (No. 1)

DHANBAD

नई दिल्ली, 30 मार्च, 1989

का. आ. 673.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार, मेमर्स भारत कोकिंग कोल. लि. की जायरामपुर कोलियरी, लोदना क्षेत्र, संख्या X के प्रबंधन में संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, सं. 2, धनदत्त के पत्राट को प्रकाशित करती है, जो केन्द्रीय सरकार की 14-3-1989 को प्राप्त हुआ था।

New Delhi, the 30th March, 1989

S.O. 673.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad,

as shown in the Annexure in the industrial dispute between the employers in relation to the Lodna Area No. X Joyrampur Colliery M/s. Bharat Coking coal Limited and their workmen, which was received by the Central Government on the 14th March, 1989.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

Reference No. 88 of 1985

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Lodna Area No. X Joyrampur Colliery of M/s. Bharat Coking Coal Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen : Shri Ramayan Singh, the concerned workman.

On behalf of the employers : Shri B. Joshi, Advocate.

State : Bihar.

Industry : Coal.

Dated, Dhanbad, the 7th March, 1989.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following to this Tribunal for adjudication vide their Order No. L-24012(10)/5-D.IV(B), dated the 6th June, 1985.

SCHEDULE

“Whether the demand of United Coal Workers Union to place Shri Ramayan Singh, Pump Operator of Joyrampur Colliery of Lodna Area No. X, of M/s. Bharat Coking Coal Ltd., P.O. Lodna, Distt. Dhanbad in clerical Grade-II is justified ? If so, to what relief is the workman entitled?”

In this case both the parties appeared and filed their respective W.S. Thereafter several adjournments were granted to the parties for filing their respective documents. But subsequently both the parties appeared before me and filed a petition of compromise. I heard both the parties on the said petition of compromise and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the compromise petition which forms part of the Award as Annexure.

I. N. SINHA, Presiding Officer

[No. L-24012(10)/85-D.IV(B)]IR(Coal-1)]

K. J. DYVA PRASAD, Desk Officer

BEFORE THE PRESIDING OFFICER CENTRAL
GOVERNMENT, INDUSTRIAL TRIBUNAL NO.
2 AT DHANBAD.

Reference No. 88/85.

Employers in relation to the management of Joyram-
pur Colliery.

AND

Their workman.

Petition of compromise.

The humble petition on behalf of the parties to the
above dispute most respectfully sheweth:—

1. That without prejudice to the respective conten-
tions of the parties contained in their written state-
ments, the industrial dispute has been amicably settl-
ed between the parties on the following terms :—

Terms of Settlement

- (a) That the concerned workman Sri Ramayan Singh will be designated as Filter Plant Operator. He will perform additional duties of supervision over his co-workers employed in the Water Treatment Plant in an efficient manner.
- (b) That considering extra duties being performed by him over and above his main and substantial duties, he will be placed in Category-V as a special case for him effective from 1st January, 1987.
- (c) That he will not be entitled to extra allowance of Rs. 2.92 as is being paid from the date he will be adjusted in Category-V. He will not claim for any difference of wages or any further allowance over and above the amount already paid to him.
- (d) That he will be given notional seniority in Category-V with effect from 1-1-1987 and his seniority in Category-V amongst time rated workers will be fixed accordingly.

(e) That Sri Ramayan Singh will be over all responsible for maintaining the filter plant and he should be literate enough to maintain the records.

2. That in view of the above settlement the concerned workman will have no further claim against the management and the dispute stands resolved.

Under the facts and circumstances stated above the Hon'ble Tribunal will be graciously pleased to accept the settlement as fair and proper and be pleased to pass the Award in terms of the settlement.

FOR THE WORKMAN.

1. (S. K. Ray),
Joint General Secretary,
Rashtriya Colliery Mazdoor Sangh.

(Ramayan Singh),

Workman concerned.

Dated : 1-2-1989.

FOR THE EMPLOYERS .

1. (S. K. Sen)
General Manager (Oprn.),
MOCP|Area-X.
2. (S. N. Tiwary),
Agent|Dy. C.M.E.,
Joyrampur Colliery.
3. (S. P. Grover),
Dy. Chief Personnel Manager,
MOCP|Area-X
4. (S. K. Ghosh),
Dy. Personnel Manager (IR),
MOCP|Area-X.

Witnesses :

- 1.
- 2.

